

# Help Wanted: Cleanliness in work breakrooms

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**DEAR CARRIE:** Does an employer have to provide clean break areas for employees? Our break area is always riddled with flies, litter and debris. Many employees who have given up just leave the building for lunch. Is it too much to expect a clean eating area? -- **Bad Housekeeping**

**DEAR BAD:** Legally, you should have a clean lunch area, according to the [Occupational Safety and Health Administration](#), the federal agency that polices workplaces for health and safety issues.

"We have a standard for housekeeping," said Anthony Ciuffo, who heads OSHA's [Long Island](#) office, which is in [Westbury](#). "All places of employment, passageways, storerooms and service rooms shall be kept clean and orderly and in a sanitary condition," said Ciuffo, quoting OSHA regulations.

What's more, he said companies must try to prevent unsanitary problems in the first place. He quoted the following regulation:

"Every enclosed workplace shall be so constructed, equipped and maintained, so as far as reasonably practicable, as to prevent the entrance or harborage of rodents, insects and other vermin. A continuing and effective extermination program shall be instituted when their presence is detected."

Ciuffo says his office often receives complaints like yours. If you need more information, contact OSHA at 516-334-3344.

**DEAR CARRIE:** I work in a company with fewer than 10 employees. Before coming on board, I was promised medical coverage. Six months later, I am still not insured. When I asked the owner why, he said the company cannot afford the expense. All other employees are covered. For the record, I am a full-time managerial



employee. Do I have any recourse? -- **Zero Benefits**

**DEAR ZERO:** Whether you have any recourse depends on the terms of your employment, said attorney Michael J. Borrelli of Borrelli & Associates in [Great Neck](#).

"If the employee and the employer have an oral agreement for employment that can be performed in one year or less and the health benefits were part of the oral agreement, then the employee has a valid claim for breach of contract," Borrelli said.

On the other hand, longer employment could pose a problem. "If the employment was open-ended or for more than a year and not in writing, then the employee's claim is defeated," he said.

You would lose out in that instance because of something known as the "statute of frauds," Borrelli said. To seek recourse under that statute, you would have to have a written contract for services if they cannot be completed within one year, he said.

"Should there be a breach by either party, the opposing party may raise the [statute of frauds] as a defense and essentially invalidate the agreement," he said. "The [statute of frauds] is satisfied if there is [something written] and it is signed by the party that it is being enforced against."

So in that case unless you have something in writing and your employer has signed it, you may have no recourse.

Here's something more promising to ponder: If, as you stated, you're the only employee without benefits, that could prove problematic for your employer, Borrelli said.

If the employer's health benefits plan is a group plan under which "all similarly situated employees" receive health benefits, the employee may file a "discrimination claim because the employer cannot arbitrarily pick and chose which members of a class of employees receive benefits," Borrelli said.

You would file such a claim under the Employee Retirement Income Security Act, or ERISA.

For more on OSHA's housekeeping regulations for workplaces, go to <http://1.usa.gov/QgtlQ6> and <http://1.usa.gov/S0f0Go>

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