

Paid leave Employer's obligations

May 2023



Preamble

All employees, regardless of the duration of their contract, working time and seniority, are entitled to days of paid leave by their employer. Every employee is entitled each year to **25** working days (5 weeks) – or **30 working days**.

1. A right exercised in kind

The right to paid leave must be exercised in kind. Thus the employer has the obligation to grant their leave to employees. The latter are **nevertheless obliged to take them**.

The parties cannot therefore agree to replace the exercise of the leave by the payment of an indemnity.

It is only in the case of termination of the employment contract that the employee may be paid for his leave not taken, through the compensatory allowance for paid leave.

2. The period of taking and carrying over leave

The period for taking leave is fixed by collective agreement, or, failing that, by the employer and must include a period fixed by the Labour Code (1 May to 31 October).

On the other hand, **the vesting period** runs from 1 June of year N to 31 May of year N+1.

Paid leave must in principle be taken during this period or it will be lost on 1 June of year N+1, provided that the employer has fulfilled his leave obligations.

However, by usage, company agreement or if the collective agreement so provides, **the remainder of paid leave not taken may be carried over** to the following years.

An employee may take paid leave **already acquired in advance**, without waiting for the period of taking it to begin, provided that the employer agrees. The employer will not be able to require the employee to take paid leave in advance.

For example, an employee hired on September 1, 2023, can benefit from 5 days of leave as of December 1, 2023, without having to wait for the beginning of the period of taking paid leave, i.e. June 1, 2024.

3. Employer's obligations

The employer has the obligation to take **the necessary measures** to allow employees to take their leave.

He must prove that he has complied with the following obligations:

- Informing employees of the period of taking leave at least 2 months before the opening of this period.
- Communication of the order of departures on leave to each employee one month before his departure.
- Formal notice to the employee to take his leave and make him take at least 12 working days continuously in the period from May 1 to October 31 of each year.

Failing to fulfil his obligations, the employer may be ordered to compensate the damage suffered by the employee.

4. The risks of a high balance

A high paid leave balance presents risks for the employer. This shows that the employee was unable to take his leave and that he did not exercise his right to rest.

The employer may be ordered to pay him damages and his liability may be engaged in the event of an accident at work or occupational disease.

This fact sheet contains summary information. Please contact us for advice tailored to your situation. We cannot be held responsible for misinterpretation.

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