

Acquisition of paid leave Rights and duration

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Preamble

The period for taking leave must include the period from 1 May to 31 October of each year. At the beginning of this mandatory period, how is the acquisition of paid leave organized?

In addition, since the entry into force on 24 April 2024 of the law of 22 April 2024, new legal rules on the acquisition of paid leave during sick leave are applicable. How to approach these new rules?

1. Beneficiaries and entitlement

The right to paid annual leave is open to **any employee bound by an employment contract**, regardless of their nationality and the nature of their employment contract (permanent contract, fixed-term contract, apprenticeship contract, etc.).

All employees acquire paid leave **as soon as they join the company** (regardless of whether the employee is on a trial period), without any condition as to minimum working hours or actual work. On the other hand, the provisions relating to paid leave do not apply to trainees.

Paid leave is earned over a reference period. The reference year for the calculation of entitlements is the period **between 1 June of the previous year and 31 May of the current year** (unless otherwise provided for by a company, establishment or branch collective agreement, which may provide for another period).

2. The duration of the leave

To calculate the number of days of paid leave, only **periods of actual work or those assimilated to them must be taken into account**.

Employees are entitled to annual paid leave of 2.5 working days per month of actual work performed with the same employer over a reference period. This must be calculated in proportion to the time spent in the company if the employee does not have a full month in the company.

- Thus, employees who have worked the entire reference period are entitled to a minimum of 5 weeks of paid leave, i.e. 30 working days per year.

- The employer can also deduct paid leave in working days (25 working days per year – i.e. 2.08 working days per month – for an employee who has worked the entire reference period).

A collective agreement may provide for the allocation of additional days of leave (e.g. additional seniority leave).

Reminder: the acquisition is the same whether the employee is full-time or part-time. The difference will be made when the days taken are counted.

3. Determination of actual work and equivalent periods

The duration of paid leave is calculated by taking into account the work actually performed by the employee during the reference period. The notion of actual work is understood as **any period of work completed in the company, even that carried out during the trial period and the notice period.**

Any day on which the agreed work was performed is therefore considered to be an actual working day. This notion is assessed independently of the working hours practiced by the employee.

When the right to leave is available, certain absences are assimilated to periods of actual work for the purpose of determining the duration of the leave.

Please note: collective agreements may be more favourable and assimilate other absences to actual work.

PERIODS TREATED AS ACTUAL WORKING TIME

Rest periods	Paid leave from the previous year, RTT days, public holidays, mandatory compensation for rest
Leave for family reasons	Legal leave for family events, maternity, paternity or childcare leave, adoption leave, absence for medically assisted procreation (PMA) examinations, bereavement leave following the death of a child
Health leave	Accident at work and occupational or non-occupational disease (see, law of 22 April 2024 - modified rules and limits of acquisition), commuting accident
Leave for training	Leave for validation of prior experiential learning, leave to prepare for the apprenticeship examination tests, etc.
Absences for activities or training of staff representatives or unionized employees	Delegation hours, economic training course for CSE elected officials
Absences for civic, social or military activities	Defence and citizenship day, conscription, time for industrial tribunals, meetings of the directors of the social security funds...

NB: *periods of part-time work* are taken into account for the calculation of the acquisition of paid leave rights. As such, the hours not worked under part-time work during the coronavirus period are taken into account.

PERIODS NOT ASSIMILATED TO ACTUAL WORKING TIME

Some periods are not assimilated to actual working time and are therefore not taken into account in the calculation of paid leave days.

For example: full-time parental leave, parental presence leave, legal leave for sick children, caregiver leave, redeployment leave, layoff, strike, etc.

4. Paid Leave and Illness

4.1. The new applicable measures

- Acquisition of **2 working days of leave** per month for periods of suspension for **accident or illness not of a professional nature**, up to a **maximum of 24 working days** per period of accrual of leave (4 weeks).
- Employees who are absent due to an **accident at work or an occupational disease** continue to acquire the legal leave for all periods of their absence, i.e. 30 working days per period (5 weeks). **The 1-year vesting limit is removed.** **Calculation of the paid leave allowance:** the notional salary for absences due to accident or non-occupational illness will be taken into account within the **limit of 80%** for the calculation of the paid leave allowance according to the 1/10th rule. The employer will be required **to inform** the employee, by any means (mentioned on the pay slip being allowed), **within one month of the resumption of work:** of the number of days the employee has and the date until which the days may be taken.

4.2. What is the limitation period?

The new provisions of the law have been applicable since **1 December 2009**.

Any action pursuant to the employment contract for the granting of leave days must be introduced:

- For **employees in employment** within 2 years of the entry into force of the law, i.e. until 24 April 2026.
- For **employees whose contract is terminated**, the three-year limitation period will apply, i.e. 3 years from the termination of their employment contract.

As such, the employee can take legal action for damages and interest and compensation for paid leave since 2009. This period will apply even in the absence of information from the employer.

4.3. The introduction of a carry-over period

Regarding the carry-over of leave earned before or after sick leave (professional or not), the duration of the carry-over period of earned leave may not be less than 15 months. A company or establishment agreement or, failing that, a branch agreement, could set a longer period of carry-over.

Beyond this period, the leave will be lost if the employee does not take it even though the employer has informed him/her and asked him/her to take it.

This carry-over, on the other hand, does not apply to the case where the employee's sick leave ends before the expiry of the period of leave. In this case, the employee must be informed of his or her leave entitlements and must take them before the end of the leave reference period.

What is the starting point for the 15-month carry-over period?

- The starting point is the date on which the employee **receives, after returning to work,** information **from his/her employer** on the leave available to them for paid leave that could not be taken during the leave taking period , due to a work stoppage
- The starting point is the date of **the end of the period of accrual of paid leave** for employees who **have been on sick leave for more than one year** and **whose contract continues to be suspended**. More specifically, it is the end date of the vesting period for which the leave was earned if, on that date, the employee is still on sick leave. If the carry-over period has not expired when the employee resumes work, this period is suspended until the employee has received the information from the employer

4.4. What are the recommendations?

- Modify the internal processes and settings of your payroll software
- Provision for paid leave risks for employees who have left and are in the course of the performance of the contract
- Analyze these paid leave carry-over practices and modify them if necessary

5. Statutory additional paid leave

Additional days of leave for dependent children must be given for employees under **21 years of age on 30 April of the previous year**. As such, they benefit from **2 additional days of leave** per dependent child.

Employees **over 21 years of age who do not benefit from full leave** are also entitled to **2 additional days of leave** per dependent child, provided that the cumulative number of days may not exceed the maximum duration of annual leave (30 working days – 25 working days).

Additional leave is only due if the right to the main leave exists.

NB: - a dependent child is defined as a child living at home and under 15 years of age on 30 April n-1 (no conditions for children with disabilities)

- more favourable provisions may be taken by agreement or by company agreement.

6. Sanctions

An employee who has not taken his/her annual leave can obtain compensation for the damage suffered (damages). It is up to the employer to prove that the leave has been taken and it is up to the employer to take all the necessary measures so that the employee can benefit from his/her leave.

Employers who do not comply with the legal and regulatory provisions are liable to a 5th class fine, applicable as many times as there are persons concerned.

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

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