



Insight ...

Paid leave and illness

April 2024

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On April 10, 2024, the law containing various provisions for adaptation to European Union law was definitively adopted. It includes provisions to bring French law into line with European law on the acquisition of paid leave in the event of sick leave. Following the case law of September 13, 2023, this law sets out the new rules applicable to employers and employees, as well as the provisions applicable to situations arising prior to the law. These measures will come into force the day after publication of the law in the Journal Officiel, which may be delayed by an appeal to the Conseil Constitutionnel. Further details may also be provided by the administration.

Acquiring paid leave in the event of occupational illness or workplace accident

Previously, periods of accidental injury were considered as periods of actual work for the purposes of calculating paid leave, but only for an uninterrupted period of one year. This limitation has been abolished, and employees suffering from an accident or occupational disease will now be entitled to paid leave for the entire duration of their absence from work, even if this exceeds 12 months. The employee therefore acquires 2.5 working days of paid leave per month of absence from work due to an accident or occupational disease, i.e. 30 working days of paid leave if the employee is absent from work for the entire reference period, and 60 days for an accident or occupational disease lasting 2 years.

Acquiring paid leave in the event of non-occupational illness

Previously, an employee on non-occupational sick leave was not entitled to paid vacation. From now on, periods of non-occupational illness are considered as periods of actual work for the purposes of calculating paid leave, without any time limit. These provisions apply to all employees, without further conditions. However, an employee on non-occupational sick leave only earns 2 working days' paid vacation per month of sick leave, compared with 2.5 working days for an actual month's work. This entitlement is limited to 24 working days per reference period. (generally, June 1st N / May 31st N+1). The employee therefore does not benefit from the 5th week of paid vacation.

Note that the rules of equivalence remain unchanged, and that an employee with 48 weeks of actual work (or equivalent periods) will be entitled to 30 working days of paid vacation (5 weeks). For an employee who is sick for only part of the year, two calculation rules will therefore apply. For example, an employee absent for 3 months during the reference period will be entitled to 28.5 working days of paid vacation over the year, i.e.: 2.5 days over 9 months and 2 days over 3 months. When an employee is sick for only part of a month, it is not yet specified whether a pro rata should be applied. Please note that you should also consider any more favorable collective bargaining provisions concerning the acquisition of paid leave during non-work-related stoppages.

Calculating vacation pay

Annual leave entitles employees to an allowance equal to one-tenth of their total gross remuneration during the reference period. From now on, it is stated that for the calculation of the tenth, the remuneration for periods of nonoccupational illness is only considered up to 80% (to consider the acquisition of 2 working days paid leave instead of 2.5 working days). On the other hand, for work stoppages due to occupational injury or disease, 100% of pay is considered (acquisition of 2.5 working days of paid leave).

Note that the indemnity calculated in this way cannot be less than the remuneration that would have been received during the period of leave if the employee had continued to work (application of the salary continuation rule).

Carryover of paid leave earned but not taken due to sick leave

Henceforth, when an employee is unable to take all or part of the leave, he or she has earned during the leave-taking period, due to non-occupational illness or occupational injury, he or she is entitled to a 15-month carryover period in order to be able to use it. This 15-month carry-over period is a legal minimum, which may be increased by a company or establishment agreement or, failing that, by an industry convention or agreement.

At the end of the 15-month period, if the employee has not been able to balance his or her paid leave, it is definitively lost.

As a reminder, the vacation entitlement period can be set by company agreement or, failing that, by industry agreement. In the absence of an agreement, it is defined by the employer after consultation of the CSE. In all cases, it covers the period from May 1 to October 31 of each year.

New employer information obligation

This 15-month deferral period is accompanied by a new obligation for the employer.

In fact, this period only begins on the date on which the employer informs the employee, after his return to work, of his vacation entitlement.

At the end of a period of absence from work due to non-occupational illness or occupational injury, regardless of its duration, the employer is required to inform the employee within 1 month of resuming work: of the number of days of leave available to him/her, and of the date by which these days of leave may be taken.

This information is brought to the employee's attention by any means that confers a certain date of receipt, in particular by means of the pay slip. Failure to inform the employee, or late notification, postpones the start of the period for deferring earned paid leave.

Special case of long-term sick leave

The law provides for a specific deferral provision in the event of work stoppage of more than one year for nonoccupational illness or occupational injury.

The 15-month carry-over period for paid leave earned during a period of sick leave begins on the date on which the reference period for which the leave was earned ends, if the employment contract has been suspended for at least one year due to the illness or accident. In this case, the 15-month deferral period can begin while the employee is still off work, without waiting for the employee to return to work, and without the employer having to inform the employee, since the deferral period begins at the end of the vesting period. If the employee returns to work before the expiry of the 15-month deferral period, it is suspended until the employer fulfils his obligation to inform. Thus, in the case of a deferral period starting on 05/31/N, the end of this period is not 08/31/N+1 but 08/31/N+1 increased by the number of days elapsed between the date of resumption of work and the date of notification of the employer.

If the employee returns to work after the 15-month postponement period, he loses his paid vacation entitlement.

Exemples

Date of work stoppage	Acquisition period	Number of accrued CP days	Rest period defined by collective agreement or employer's decision	Specific deferral period	Remaining paid leave on return to work
Non occupational illness 02/01/2025 to 31/05/2025	01/06/2024 to 31/05/2025	28 days (8*2.5j +4*2j)	Open for business of work	Not applicable	28 days
Non occupational illness 30/05/2024 to 31/05/2027	01/06/2023 to 31/05/2024	30 days (no impact of illness)	Closed on trade-in of work	Postponement for 15 months from the date on which the employer is informed of the employee's return to work i.e postponement until 31/08/28, at the earliest, employee notification period to be taken into account.	30 days
	01/06/2024 to 31/05/2025	24 days	Closed on trade-in of work	15 months deferral from 31/05/2025 (leave of more than one year) to 31/08/2026. On this date, if the employee has not returned to work, the days of leave are definitively lost.	0 day
	01/06/2025 to 31/05/2026	24 days	Closed on trade-in of work	15 months deferral (shutdown of more than one year) to 31/08/2027.	24 days
	01/06/2026 to 31/05/2027	24 days	Open for business of work	Postponement of 15 months from 31/05/2027 (stoppage of more than one year) i.e, postponement until 31/08/2028 at the earliest, employee notification period to be taken into account.	24 days

Retroactivity of new rules

The law provides for retroactive application, from December 1, 2009: of the rule governing the acquisition of paid leave during sick leave up to a limit of 2 working days per month (and 24 working days per year), and of the 15-month carryover period for paid leave. Retroactivity does not apply to the abolition of the 1- year limit for the acquisition of paid leave during sick leave.

This retroactivity applies subject to final court rulings or more favorable contractual stipulations in force on the date leave entitlements are acquired. Note that the retroactive acquisition of paid leave during a period of sick leave cannot result in the employee benefiting from more than 24 working days of paid leave per year of acquisition, after considering days already acquired over this period.

Employees still on the job

An employee still working for his company who wishes to claim paid leave entitlements from his employer in respect of sick leave taken since December 1, 2009, has 2 years in which to bring the matter before a judge, from the date on which the law came into force. A period-by-period analysis will be carried out to determine the leave carryover arrangements available to the employee, as some past entitlements may be lost. Example: An employee was ill from 01/02/2021 to 31/05/2021. Over the vesting period from 01/06/2020 to 31/05/2021, he was off sick for 4 months and worked for 8 months. He has already acquired 20 working days of CP in respect of his actual work (2.5 days of CP x 8 months' work). He will therefore only be able to claim 4 working days of CP in respect of the sick leave (and not 8 days, equivalent to 2 days of CP x 4 months of sick leave).

These 4 CP days can be taken within 15 months of the employer informing the employee, although this information can only be provided after the law comes into force. If the employer fails to inform the employee of his rights, the employee has 2 years from the date of entry into force of the law to take legal action.

Employees who have left the company

The law makes no specific provision in this case. The ordinary rules of prescription apply. As vacation pay is a wage claim, a limitation period of 3 years applies. If the employee has left the company more than 3 years before the law comes into force, in principle he or she will not be able to take legal action to obtain payment of compensatory vacation pay.



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