

Annual leave

Numerous questions arise for the employer in connection with granting, calculation and expiration of annual leave entitlement.

1. Leave entitlement

For most employees, the annual leave entitlement consists of the statutory annual leave entitlement in accordance with the Federal Holiday Act (24 working days for a six-day week in full-time employment, i.e. 20 working days for a five-day week in full-time employment) and an additional contractual annual leave entitlement (e.g. 10 working days, i.e. a total of 30 working days for a five-day week). The full annual leave entitlement arises for the first time after six months of the employment. The annual leave entitlement is calculated on the basis of the agreed working days per week, not the agreed working hours per week. The annual leave entitlement always consists of full days. It is not possible to take half a day's annual leave.

2. Additional annual leave entitlement

According to the Social Security Code, severely disabled persons are entitled to five days of additional annual leave entitlement for a five-day working week. Special regulations also apply to adolescents (under 18 years of age) according to the Youth Health and Safety at Work Act.

3. Reduction of annual leave entitlement

Probably the most relevant case in practice is the reduction of annual leave entitlement during parental leave: the employer may reduce the annual leave to which the employee is entitled for the leave year by one twelfth for each full calendar month for which the employee takes parental leave. For the reduction, the employer must clearly declare to the employee that it wishes to reduce the leave for the period of parental leave. Upon receipt of the declaration of reduction, the reduced part of the leave entitlement lapses.

In our opinion, if the company introduces short-time work, the holiday entitlement is reduced proportionately for the full months for which the employee was on short-time work. As a precaution, the reduction should be included in the agreement on the introduction of short-time work.

4. Granting annual leave/Company holidays

Contrary to what is widely assumed, it is the employer who determines the time of holiday in accordance with the Federal Holiday Act, taking into account the employee's wishes. In practice, the employee applies for annual leave for a certain period of time and the employer



grants or rejects it, for which it needs important reasons (urgent operational reasons or preferential holiday wishes of other employees). If the holiday is granted, both sides are bound by it.

In addition, the employer may in certain cases order company holidays and grant the annual leave in this way. In companies with a works council, company holidays are subject to co-determination by the works council. If the works council approves a works agreement on company holidays, this agreement constitutes an urgent operational reason for the individual employees to grant holiday during the company holidays. It has not yet been decided by the highest court whether it is possible to arrange company holidays in a company without a works council. In order to avoid possible disputes, agreements should be concluded with the employees in companies without a works council on how to determine the amount of leave during company holidays. In both cases, not all the employees' annual leave can be used as company holidays. The extent of such holiday depends on the individual case. The Federal Labour Court assumed in the past that a determination of 3/5 of the annual leave is permissible.

5. Expiration

The Federal Holiday Act stipulates that annual leave must be granted and taken in the current calendar year. As an exception, unused annual leave can be carried forward to the following year, but then expires at the latest at the end of the statutory carryforward period on March 31 of the following year, unless otherwise provided for in the employment contract, works agreement or collective bargaining agreement. According to recently developed principles of the Federal Labour Court, however, annual leave entitlements only expire if the employer has requested from its employees in a timely, concrete and transparent manner to take the annual leave and the employee has not taken the annual leave nevertheless. In order to minimize risks as far as possible, the employer should send individualized information to its employees several times a year, which should also be included in the personnel file for the purpose of evidence keeping. The concrete number of individually outstanding annual leave days should be stated, as well as the specific expiry dates applicable in each case. Different arrangements are possible for additional annual leave.

6. Switching between full-time and part-time work

When switching from full-time to part-time employment and vice versa, the question arises as to how the annual leave entitlement acquired before the change should be remunerated. In both cases, an annual leave remuneration corresponding to the full-time salary must be paid. The Federal Labour Court decided that the annual leave entitlement acquired during full-time employment must be remunerated in accordance with full-time employment. The reverse situation has not yet been decided, however, pursuant to the Federal Holiday Act, the amount of the

annual leave remuneration is to be calculated according to the average earnings of the last thirteen weeks of employment.

We recommend that employees who want to switch between full-time and part-time work and vice versa should at an early stage be encouraged to take their annual leave before they move to part-time work or, conversely, to full-time work.

7. Annual leave entitlement in case of prolonged incapacity to work

An employee's incapacity to work due to illness does not exclude the accrual of annual leave entitlement. However, the employee can only take the annual leave when they are no longer incapable of working. If the employee is permanently incapable of working, annual leave entitlement does not expire automatically on 31 March of the next year. It will only expire 15 months after the end of the leave year. This can be excluded for contractual annual leave.

8. Payment of compensation for annual leave on termination of employment

If the employee still has outstanding annual leave days at the end of the employment relationship, these are to be compensated in accordance with the law. We therefore generally recommend granting garden leave explicitly including the outstanding annual leave days and including a statement that the parties agree that the outstanding annual leave was granted and taken in kind in any settlement. Payment of compensation for annual leave days during an ongoing employment relationship is not possible and does not use up the holiday claim.