

Newsletter

Transfer of vacation days as of 2024

The Royal Decree of February 8, 2023 introduced an exception to the prohibition of transferring vacation days to the next calendar year as of 2024. In this newsletter, we will inform you on what this exception entails, in view of the approaching year-end.



Right to yearly vacation

Notion

In principle, each calendar year, every employee has the right to take vacation. This is no different under the Belgian legislation.

The duration of this yearly vacation is regulated by the Acts of June 28, 1971 on yearly vacation. The yearly vacation days employees are entitled to on the basis of these Acts, are also known as statutory vacation days.¹ In principle, a full-time employee working 5 days a week is entitled to 20 statutory vacation days per year.

¹ This is not the same as working time reduction days, public holidays or extra-legal vacation days.

Modalities of taking yearly vacation until 2023

Each calendar year during which employees are entitled to take statutory vacation days is called a vacation year.

In principle, all statutory vacation days must be taken by the end of that vacation year (i.e. at the latest on December 31st).

Therefore, it is forbidden to carry over any statutory vacation days to the following calendar year. Hence, the remaining statutory vacation days which cannot be taken by the end of the vacation year, are lost.

Exception as of 2024

The Royal Decree of February 8, 2023 introduced an exception to this strict prohibition.

As of the vacation year 2024, the statutory vacation days which cannot be taken by December 31st of the vacation year, due to a suspension of the employment agreement stipulated by law, can be carried over to a later period in time.

Suspension of the employment agreement stipulated by law

The new legal exception is not applicable to every suspension of the employment agreement, but only to the suspensions summed up in a limitative list in article 64,1^o/1 of the Royal Decree of 30 March 1967.

The most common suspensions of the employment agreement mentioned in that list are: incapacity for work due to illness, maternity leave and paternity leave.

Modalities of the transfer

The statutory vacation days, which an employee cannot take by the end of the vacation year due to one of the suspensions stipulated by law, can be carried over up to 24 months after the vacation year.

The payment for these days, however, must already take place in December of the vacation year in which not all statutory vacation days could be taken.

For the year 2024, this means the following: an employee who, for example, cannot take 5 statutory vacation days due to illness will be able

to carry over these 5 days. Those days will be able to be taken until December 31, 2026, which is 24 months after the end of the current vacation year. However, payment for those 5 days will already take place now, in December 2024.

Impact

It is up to the employer to correctly inform his/her employees of this new legal exception so that such a transfer can be processed correctly in the payroll and on the vacation attestation of his/her employees. In all other cases beyond this exception, the transfer of statutory vacation days to a subsequent vacation year remains prohibited.

Implications

The employer who violates his obligations concerning the Acts on yearly vacation faces the risk to be sanctioned with a sanction of level 2 of the Social Penal Code.²

Legal assistance

Our labour law team is happy to assist you in all matters regarding the possible transfer of vacation days for your employees. Please do not hesitate to contact us via the contact details mentioned at the end of this newsletter.

² This is either a criminal fine of 400-4.000 EUR or an administrative fine of 200-2.000 EUR. This fine must be multiplied with the number of employees.

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