

The employee can't give up his or her annual leave and the employer can't restrict this right

Having paid annual leave remains one of the rights that are guaranteed to all employees, the provisions in the Labor Code being very clear in this matter and stating that the right to annual leave cannot be the subject of any transfer, waiver or limitation. It is also important to note that the period of sick leave does not diminish the duration of the annual leave, regardless of the number of days off granted by a doctor.

An employee is entitled to a minimum of 20 working days of holiday leave for one year of work, regardless of the nature of the contract and work duration. From Accace's experience, we have seen that, in practice, most companies grant at least 21 days of annual leave, without taking into account the minimum number of days required by law.

Of course, the annual leave is an aspect negotiated in the individual labor contract, therefore the number of days of annual leave is established in the moment of the employment, following the direct negotiation between the employer and the employee. Accace wishes to draw attention over the fact that **their number can't be less than the minimum 20 days** required by law.

The calculation of annual leave must also take the European legislation into account

When calculating the right to annual leave for employees, the companies must also take into consideration the provisions of international law. Thus, the provisions of the Labor Code must be merged to those of European Directive no. 2003/88/CE, which brings clarifications regarding matters where, in practice, the Labor Code has several options of implementation. The issue in question is **granting paid vacation days even for the periods during which the employee is on sick leave**. In reality, many employers exclude these periods from the time base to which they refer when calculating the right to paid annual leave.

We refer here to art. 7 alin. (1) of European Directive no. 2003/88/CE, which stipulates that the Member States must take the necessary measures for every employee to benefit from a paid annual leave of at least four weeks, in accordance with the conditions for obtaining and granting annual leaves, provided by national laws and practices.

To clarify these provisions, the European Court of Justice issued a decision which establishes that: **the right to paid annual leave must be granted to each employee, regardless of his or her health condition**. Therefore, the period of leave on medical grounds does not decrease the duration of paid annual leave.

What are the employers' obligations?

A very important aspect that the employer must take into consideration when planning the annual leave is that **each employee must benefit from at least 10 days of uninterrupted leave per calendar year**.

Furthermore, the employer is obligated to grant the remaining leave days, by the end of the following year, to all the employees who didn't take their entire annual leave they were entitled to that year. As an exception, the period of leave days can be extended by an agreement between the parties or the provisions of the individual employment contract or collective employment contract.

Case study

The employee Popescu Ioana is hired at company „X” on January 1, 2014. Following individual negotiations between her and the employer, her right to annual leave is established to 21 working days. In the period July 1, 2014 – September 1, 2014, the employee’s contract was suspended because she was on sick leave. For various reasons, at the employee’s request, her contract will be terminated on October 31, 2014.

Thus, until the termination of employment, the employee has 10 months of activity within the company. In this case, the right to paid leave is calculated as follows:

$21 \text{ days} / 12 \text{ months} = 1,75 \text{ days per month}$

$1,75 \text{ days per month} * 10 \text{ active months} = 17,5 \text{ days of paid leave}$

18 days in total, because the right to paid leave is always rounded up to benefit the employee.

According to monthly timesheets and leave requests registered by the company, it can be concluded that over the 10 months of activity, the employee had only 12 days of leave, thus she will receive payment for the 6 days of leave not taken, along with the salary for the last month.

Thus, the employee **receives her right to full annual leave for the period of employment, even if she was on sick leave for 2 months.**

Accace also points out that, according to the Labor Code, the money compensation for annual leave days that were not taken during a calendar year is possible only upon termination of the individual employment contract.

In addition to the 20 days of annual leave guaranteed by the Labor Code, employees also receive days off for public holidays, which are not included in the duration of the annual leave. However, the workers in healthcare and public alimentation may be required to work on those days to ensure health assistance and supplying the population with basic food products, respectively. To them, the company is obliged to grant paid time off in the next 30 days. If, for justified reasons, days off can’t be granted, the employees will receive a bonus of at least 100% of their salary.

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About Accace

With a vast experience in outsourcing and advisory in Central and Eastern Europe, Accace currently offers these services globally, both through offices in Romania, the Czech Republic, Germany, Hungary, Poland, Slovakia, Ukraine and the UK, as well as in other 12 countries through its established partners, namely in Austria, Brazil, Bulgaria, Croatia, China, India, Luxemburg, the Netherlands, Russia, Serbia, Slovenia and USA.

Accace offers a wide range of services, including accounting, financial reporting, corporate and secretarial services, payroll, human resources management, as well as tax and business advisory. Furthermore, Accace offers new technological solutions to support and improve these services, solutions that were developed globally and adapted according to the needs of local clients.

With an annual turnover of over 9 mil. euro at group level, Accace managed to attract renowned clients from the real estate domain, such as CBRE or GE Capital Real Estate, the financial industry, such as Allianz and ING, global manufacturers - Pirelli, Goodyear, Yamaha, Scania, ASUS, Sharp, Olympus and Orsay, as well as companies in the service industry, such as Grafton Recruitment or Falck Fire Services.



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