

UPDATE ON...

Paid holidays and sickness

The Act of 22 April 2024 containing various provisions for adapting to European Union law includes provisions for bringing French law into line with European law on the acquisition of paid holidays in the event of sick leave. Following the case law of 13 September 2023, this law lays down the new rules applicable to employers and employees and also sets out the provisions applicable to situations arising prior to the law. These measures came into force on 24 April 2024, the day after the law was published in the Journal Officiel.

Acquiring paid holidays in the event of occupational illness or accident

Previously, periods of occupational injury or disease were regarded as periods of actual work for the purposes of determining paid holidays, but only up to a maximum 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 holidays for the entire duration of their absence from work, even if this exceeds 12 months.

The employee therefore earns 2.5 working days of paid holiday per month of absence from work due to an accident or occupational disease, i.e. 30 working days of paid holiday if the employee is off work for the entire reference period and 60 days for an accident or occupational disease lasting 2 years.

to 24 working days per reference period (generally 1 June N / 31 May N+1). The employee therefore does not benefit from the 5th week of paid holiday.

It should be noted that the rules on equivalence have not been changed and that, in particular, an employee with a total of 48 weeks' actual work (or equivalent periods) will be entitled to 30 working days' paid holiday (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 holiday over the year (rounded to 29), i.e. : 2.5 days over 9 months and 2 days over 3 months.

Any more favourable collective bargaining provisions relating to the acquisition of paid holidays during non-occupational illness should be taken into account.

Acquiring paid holidays in the event of non-occupational illness

Previously, an employee on non-occupational sick leave did not earn paid holiday entitlement. From now on, periods of non-occupational illness are considered as periods of actual work for the purposes of calculating paid holidays, without any time limit. These provisions apply to all employees, without any other conditions.

However, an employee on non-occupational sick leave only earns 2 working days of paid holidays per month of sick leave, compared with 2.5 working days for an actual month of work. This entitlement is limited

Calculation of holiday pay

Annual leave entitles employees to an allowance equal to one tenth of their total gross pay during the reference period.

It is now stated that, for the calculation by the tenth, only 80 % of the remuneration for periods of non-occupational illness is taken into account (to take account of the acquisition of 2 working days of paid leave instead of 2.5 working days). For stoppages due to occupational injury or disease, 100 % of the remuneration is taken into account (2.5 working days of paid leave).

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

Carry-over of paid holidays earned but not taken as a result of sick leave

From now on, if an employee is unable to take all or part of the leave, he or she has earned during the leave period due to a non-occupational illness or occupational injury, he or she will be entitled to a carry-over period of 15 months in order to be able to use it. This 15-month carry-over period is a legal minimum that may be increased by a company or establishment agreement or, failing that, by a branch agreement.

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

As a reminder, the period for taking paid leave may be set by company agreement or, failing that, by sector agreement. In the absence of an agreement, it is defined by the employer after consultation with the Social and Economic Committee (CSE). In all cases, it covers the period from 1 May to 31 October each year. At least two months before it begins, the employer informs employees of the period in which paid leave is to be taken.

New employer information obligation

This 15-month deferral period is accompanied by a new obligation on the part of the employer. In fact, this period only begins on the date on which the employer informs the employee, after he has returned to work, of his holiday entitlement.

It is therefore stipulated that the employer, at the end of a period of absence from work due to a non-occupational illness or accident or occupational disease, regardless of its duration, has 1 month following the return to work to inform the employee of the number of days of leave available to him and the date until 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 provide information, or late provision of information, postpones the start of the carry-over period for earned paid leave.

Special case of long-term sick leave

The law provides for a specific deferral provision in the event of more than one year's absence from work due to non-occupational illness or occupational injury.

In the case of paid holiday earned as a result of sick leave, the 15-month carry-over period begins on the date on which the reference period in respect of which the leave was earned comes to an end if, on that date, the employment contract has been suspended for at least one year as a result of 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 for the rights covered by the deferral.

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 31/05/N, the end of this period is not 31/08/N+1 but 31/08/N+1 plus the number of days elapsed between the date on which the employee returns to work and the date on which the employer is informed.

If the employee returns to work after the 15-month deferral period, he or she loses their paid holiday entitlement.

Examples

Date of work stoppage	Acquisition period	Number of days of paid holidays acquired	Rest period defined by collective agreement or employer's decision	Specific deferral period	Remaining paid holidays on return work
Non-occupational illness 01/02/2025 to 31/05/2025	01/06/2024 to 31/05/2025	28 days (8*2.5 days+ 4*2 days)	Open to returning to 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 return to 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, the period for informing the employee to be taken into account.	30 days
	01/06/2024 to 31/05/2025	24 days	Closed on return to work	Deferral of 15 months from 31/05/2025 (stoppage of more than one year), i.e. 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 return to work	Postponement of 15 months from 31/05/2026 (stoppage of more than one year), i.e. 31/08/2027. If the employee returns to work before the end of the deferral period, this period will be suspended until the employee is informed of his return to work.	24 days
	01/06/2026 to 31/05/2027	24 days	Open to return to work	Postponement of 15 months from 31/05/2027 (stoppage of more than one year), i.e. postponement until 31/08/28 at the earliest, employee information period to be taken into account.	24 days

Retroactivity of the new rules

The law provides for retroactive application, from 1 December 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 carry-over period for paid leave. Retroactivity does not apply to the abolition of the 1-year limit for the acquisition of paid leave during occupational illness or accident.

This retroactivity applies subject to court decisions having the force of *res judicata* or more favourable contractual stipulations in force on the date on which leave entitlements are acquired.

It should be noted that the retroactive acquisition of paid holidays 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 taking into account the days already acquired over this period.

Employees still in post

An employee still employed by his company who wishes to claim paid leave entitlements from his employer in respect of sick leave taken since 1 December 2009, has 2 years from the date of entry into force of the law (i.e. until 23/04/2026) to bring the matter before a court, in the absence of any regularisation by the employer or if the number of days of leave regularised is disputed.

A period-by-period analysis will have to 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 therefore off sick for 4 months and worked for 8 months. He has already acquired 20 working days of paid holidays in respect of his actual work (2.5 days of paid holidays x 8 months of work). He will therefore only be able to claim 4 working days of paid holidays in respect of the sick leave (and not 8 days, equivalent to 2 days of paid holidays x 4 months of sick leave).

These 4 working days of paid holidays days may be taken within a period of 15 months from the date on which the employer informs the employee, although this information can only be provided after the law comes into force (24/04/2024). If the employer fails to inform the employee of his rights, the employee has 2 years from the entry into force of the law to take legal action (i.e. until 23/04/2026).

Employees who have left the company

The law makes no specific provision in this case. The ordinary rules of prescription apply. As the claim for paid holiday is an employee-related claim, a limitation period of 3 years applies.

If the employee has left the company for more than 3 years on the date the law comes into force, in principle, he or she will not be able to take legal action to obtain payment of compensation for paid holiday.

Our firm is at your disposal to advise and support you.

Don't hesitate to contact us.