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Paid leave entitlement and medical leave : New rules and new employers' obligation to inform employees

The new legal rules on paid leave entitlement during a medical leave, and on the taking of such paid leave, introduced by Law No. 2024-364 of April 22, 2024, became effective on April 24, 2024.

With a few exceptions, these new rules apply retroactively for the period between December 1, 2009 and April 24, 2024 (the day after publication of the Law).

Employees now earn paid leave during absences from work due to an occupational and non-occupational disease or accident

Periods during which performance of the employment contract is suspended due to a non-occupational disease or accident are considered as actual working time for the purpose of calculating paid leave entitlements.

In addition, the limit of one year's uninterrupted absence from work due to an occupational disease or accident, beyond which such absence no longer gives entitlement to paid leave, has been abolished.

As such, periods during which the employment contract is suspended due to an occupational accident or disease are now considered as periods of actual work for the purposes of determining paid leave entitlements, whatever their duration, including if the duration exceeds one year.

However, paid leave entitlement varies according to whether the absence is due to an occupational or non-occupational disease or accident:

- 2 working days of paid leave per month of absence from work, within a limit of 24 working days per paid

leave entitlement reference period (i.e., 4 weeks of paid leave per year) for employees on medical leave due to a non-occupational disease or accident;

- 2.5 working days of paid leave per month of absence from work (i.e., 30 working days per paid leave entitlement reference period) for employees on medical leave due to an occupational disease or accident.

Consequently, a distinction must be made when calculating paid leave entitlements of employees on medical leave.

A carry-over period of 15 months maximum

An employee who is unable to take, during the leave-taking period, all or part of the paid leave days he/she has earned because of an occupational or non-occupational disease or accident benefits from a **15-month carry-over period to take them**^[1].

This carry-over period starts on the date on which the employee receives, after having resumed work, information from his/her employer on the paid leave days available to him/her and on the date up to which these paid leave days may be taken^[2].

When paid leave untaken was earned during a medical leave due an occupational or non-occupational disease or accident, the carry-over period starts running on the end date of the reference period during which such paid leave has been earned if, on that date, the employment contract has been suspended for at least one year due the disease or accident.

In that case, when the employee resumes work, the carry-over period, if it has not expired, is suspended until the employee receives information on the paid leave days available to him/her and on the date up to which these paid leave days may be taken^[3].

The carry-over period can be extended by a company-level or industry-wide agreement.

Employers' new obligation to provide information to employees who resume work

Upon expiry of a period of medical leave, whatever its duration, employers now have the obligation, within one month from the date on which the relevant employee resumes work, to inform him/her of the following information:

- the number of paid leave days available;
- the date up to which these paid leave days may be taken.

The provision of this information marks the start of the carry over-period to which the relevant employee is entitled.

It is therefore essential to adapt internal HR processes to make sure this information is duly provided each time an employee returns from medical leave.

Law No. 2024-364 of April 22, 2024 does not impose any specific means to provide this information to employees. However, it is recommended to provide it by any means that confer an indisputable date of receipt (email, pay slip, hand-delivery).

Retroactive effect

The new rules governing leave entitlement during medical leave and the carry-over period apply retroactively from December 1, 2009.

However, **this retroactivity cannot result in the employee benefiting from more than 24 working days of paid leave per annual paid leave entitlement reference period**, after taking into account paid days already earned over this period.

Note: The abolition of the 1-year limit for the acquisition of paid leave during a period of absence from work due to an occupational disease or accident is not retroactive.

In short:

- if the employee still worked in the company on April 24, 2024: Any action to obtain paid leave days in respect of medical leaves taken after December 1, 2009 must be brought within 2 years from April 24, 2024, i.e. by midnight on April 23, 2026, failing which any such action will be time-barred;
- if the employee left the company before April 24, 2024, the three-year limitation period set out in Article L 3245-1 of the French Labor Code applicable to wage claims, applies.

Summary:

| | Before Law No. 2024-364 of April 22, 2024 | After Law No. 2024-364 of April 22, 2024 |
|---|---|---|
| Acquisition of paid leave during a medical leave due to an occupational disease or accident | Yes, up to a limit of one year's absence from work 2.5 paid leave days per month of absence from work, up to a limit of 30 working days | Yes, without limitation 2.5 paid leave days per month of absence from work, up to a limit of 30 working days per year |

| | | |
|--|-------------------------------|--|
| Acquisition of paid leave during a medical leave due to a non-occupational disease or accident | No | Yes 2.5 paid leave days per month of absence from work, up to a limit of 24 working days per year |
| Carry-over period for paid leave untaken | No applicable legal provision | 15-month carry-over period from the end of the reference period 15-month carry-over period starting from the date on the which the relevant employee receives information on the paid leave days available to him/her and on the date up to which these paid leave days may be taken Note: If the relevant employee has been on medical leave for at least one year that covers the entire reference period, the 15-month carry-over period starts running on the end date of the reference period during which such paid leave has been earned |
| When the relevant employee resumes work, obligation to inform him/her of his/her paid leave entitlements | No | Information to be provided on the number of paid leave days available and the date up to which these paid leave days may be taken |

[1] Article L. 3141-19-3 of the French Labor Code

[2] Article L. 3141-19-1 of the French Labor Code

[3] Article L. 3141-19-2 of the French Labor Code

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