

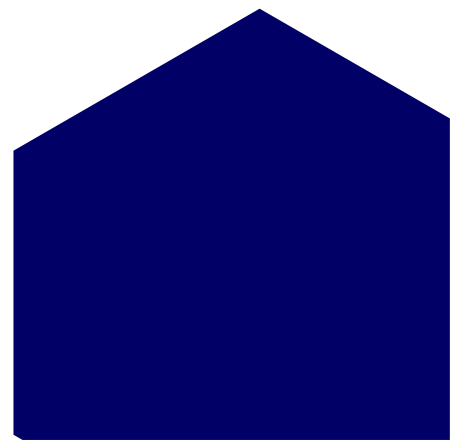


International Lawyers Network



Paid Leave

The following paper aims to succinctly address the question "Under what circumstances is an employee entitled to paid leave?"





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Contents

Chile.....	3
Colombia.....	5
Czech Republic	7
Germany	9
Hungary	11
India	13
Italy.....	15
Scotland	17
Uganda	19
United States – Delaware	21
United States - Massachusetts.....	24



Chile

Paid leave in Chile may be classified depending on who bears the obligation to compensate the employees' during their absence. Thus, paid leave may be supported by either the employer or the healthcare provider, as described below:

- **Leave paid by the employer.**

1. Bereavement: Employees in Chile are entitled to a paid furlough in the event that a family member passes away:
 - a. Loss of a child: Both parents have 10 calendar days of paid leave.
 - b. Loss of a spouse or legal partner (civil union agreement): The employee is entitled to 7 calendar days of paid leave.
 - c. Pregnancy loss: Parents have 7 business days of paid leave.
 - d. Passing of a brother, mother or father: The employee has 4 business days of paid furlough.
2. Paternity leave: Working fathers have 5 business days of paid leave following the child birthdate. The father may choose when to use the furlough, within the first month following the birthdate.
3. Marriage or Civil Union Agreement: Both employees have 5 business days of paid leave before or after the marriage or civil union agreement celebration date. Employees shall request the leave 30 days in advanced and provide supporting evidence (marriage certificate).
4. Medical exams: Employees hired for a term exceeding 30 days are entitled to half day of paid leave per year, for prostate/mammography exams or any other preventive medical exam.
5. Vaccination campaigns: In case of public vaccination campaigns for the prevention of transmissible diseases, all employees within the target population are entitled to half day of paid leave.
6. Firefighters: Employees' who are also firefighter volunteers are allowed to attend emergencies during their working days. The time required to assist these emergencies is considered as worked for salary purposes.
7. Children with autism spectrum disorder (ASD): Employees whose child has been diagnosed with ASD are entitled to attend emergencies that may affect the integrity of their children under 18 years old. Employees are entitled to attend the educational entities where their children attend. This time is considered as worked for all legal purposes.
8. Children's serious illness or accidents: Parents of children under 18 years old suffering a serious disease or accident are entitled to a paid leave of up to ten working days per year. Although the time-off shall be deemed as worked for all legal purposes, employees shall decide whether such time is deducted from the annual leave or compensated through overtime work.

**PAGBAM |
SCHWENCKE Chile**



Av. Vitacura 2939 - 2202
Santiago, 7550011 Chile

Gonzalo Aravena
gaf@pagbam.com

Fernanda Laborde
flp@pagbam.com

pagbam.com/

Tel: (562) 3263 1607



Chile (cont'd)

9. Terminal illness: Employees whose spouse, father or mother are in terminal stages are entitled to a paid leave of up to ten daily working days per year. Even though the time-off shall be deemed as worked for all legal purposes, employees shall decide whether such time is deducted from the annual leave or compensated through overtime work.
10. Legal holidays: Employees are entitled to 15 business days of holidays per each year of services.

- **Leaves paid by the healthcare provider.**

Medical leave is paid by the public or private healthcare provider, depending on the employee's affiliation. The payment depends on the duration of the medical leave:

1. Medical leave granted for eleven or more days: Employees are entitled to receive payment for the entire period (eleven days or more).
2. Medical leave granted for less than eleven days: The leave is paid from the fourth day onwards. The three first days of leave are not paid.

Please note that medical leave caused by labour accidents/illnesses are paid by the occupational accident insurance company. Employees are entitled to an occupational accident insurance provided by the employer.

Maternity leave in Chile is also paid by the healthcare provider. Pregnant employees are entitled to 6 weeks of paid leave before the birthdate (estimated date) and 24 weeks after the birthdate. Mothers of children under one year old suffering a serious disease are also entitled to a paid leave for the period determined by the health provider.

Additionally, employer and employees or labor unions are free to agree on any other paid leaves, so it is usual that the employers grant a paid leave for the employee's birthdays or other similar events.





Colombia

In Colombia, various types of paid leave are legally mandated. Notably, significant developments have taken place in the last two years, which have expanded the duration and scope of paid leave.

- A. Paid Time Off. Paid leave in Colombia is outlined in the employment contract as a minimum of 15 days paid leave a year, following completion of 1-year service. This is in addition to any public holidays.
- B. Sick leave: This leave refers to the paid time off from work that employees take due to personal illness, disability, medical appointment, with advanced approval, and/or, for illness of an employee's parents, spouse, children, sibling, or any other person who is residing in the employees' household.
- C. Paternity leave. The company, will by virtue of the law, grant the employee two weeks (2) of paid paternity leave (Law 755 of 2002). Paid leave will be granted without there being any assessment whatsoever on the existing relationship between the father and the mother (Ruling C-282 of 2012).

The Civil Registry of Birth is the only valid supporting documentation for the granting of the paid paternity leave, which will be filed with the Health Promoting Entities (E.P.S.), at the latest, within the thirty days (30) following the birth.

- D. Maternity leave. All women employees that are pregnant have the right to a leave of eighteen (18) weeks, that may start one (1) or two (2) weeks prior to the due date (at the employee's discretion). The maternity leave will be paid with the employee's salary at the time she takes maternity leave. If the salary is variable, like the case of project work or assignments, the average of the earned salary during the last year will be taken into account (or her salary during all the time she has been working if she has been working for less than a year).

Distribution of maternity leave: If agreed between the parents, the final six weeks of the maternity leave can be transferred to the father of the child to complete paternity leave, as deemed appropriate. To transfer the weeks, employers must obtain a letter from both parents, approval of the distribution of weeks from a doctor, and a medical certificate containing information regarding the birth and leave commencement dates.

Half-time paternity/maternity leave. Both parents may opt to extend their leave by working half-time during the final week for fathers, and the last six weeks for mothers. Consider that this option is not mandatory for employers to offer, and as such, they must inform their decision within five working days following the employee's request.

**Gamboa, García &
Cardona Abogados**



Carrera 9 No. 80-45
Piso 4
Bogotá, Colombia

Ingrid Barrero Valencia
ibarrero@gclegal.co

www.gclegal.co

Tel: +57 (1) 390- 2217



Colombia (cont'd)

- E. Bereavement leave. The Company will, by the law, grant employees paid mourning leave of five (5) business days in case of the death of husband, wife, permanent companion, stepparents, grandparents, brothers, sisters, daughters, sons, stepchildren, or parents, regardless of his/her type of contract or labor relationship. Said leave will commence from the day of the death.

This event will be proven through a written document issued by the competent authority within thirty (30) days following death.

- F. Voting Performance of official positions of force acceptance. In Colombia every time the country has any sort of election or voting (presidential, mayor, congress, etc.), the government randomly selects citizens to be a jury. The employer should give the employee that is chosen the time required by the government to assist to the training and an additional day after the election.

Whenever the employee is summoned as a party by a judicial authority, the Company will grant leave for the term required by said authority, provided the employee submits a certificate of summoning evidencing the start and end dates of the hearing or judicial proceeding.

In the event of mandatory leaves granted to the employee for the performance of mandatory official positions (other than as a voting jury, treasurer, or overseeing the counting of votes at an election; mandatory leaves for private sector employees to perform union duties that are inherent to the organization; and mandatory leaves for employees to attend the funeral of their co-worker), the time spent on leave cannot be deducted from the employee's salary nor shall the employee be required to work to make up the time outside of his/her regular work schedule.

- G. Domestic calamity. When an employee experiences a family or personal event that impacts their ability to carry out their duties effectively, the employer must permit them to take up to 5 paid working days off, if their emotional well-being is impacted.
- H. Paid leave by employers' decision. It is up to the employer to grant or not any other paid leave requested by the employee. Some of the most common paid leaves are related to the employee's children.





Czech Republic

1. Basic length of annual leave

The minimum amount of paid leave **in the private sector is 4 weeks per calendar year**, whereas employees in the public sector are entitled to 5 weeks, and pedagogical staff and academics to 8 weeks.

Employees working in particularly difficult conditions (such as mining) are also authorized to have additional leave.

As of January 2024, workers performing work based on agreements outside of employment relationships (flexible workers) are newly entitled to annual leave.

In the business sector, annual leave can be further extended by a collective bargaining agreement, individual agreement or internal regulation.

2. Calculation of annual leave

The use of the annual leave of a particular employee is calculated **in hours**. The calculation of the amount of leave depends on the hours actually worked and the length of annual leave stipulated by the employer

An employee who has continuously worked for the same employer for 52 weeks in the corresponding calendar year for the determined weekly working hours scheduled for that period shall be entitled to **annual leave** for determined weekly working hours multiplied by the amount of leave which the employee is entitled to in the corresponding calendar year.

An employee who is not entitled to annual leave under the previous section but who has worked for an employer in that calendar year for at least 4 weeks within the determined weekly working hours or shorter weekly working hours for this period, has the right to a **proportional part of the leave**.

The proportional part of the leave shall be 1/52 for each worked weekly working hours or shorter weekly working hours in the calendar year, multiplied by the amount of leave to which the employee is entitled to.

If the employee worked in the calendar year according to the work schedule for more than 52 weeks, the leave shall be extended by 1/52 of the annual leave for each additional weekly working hours, or shorter weekly working hours.

The missed working hours (absence) for reasons of temporary working incapacity, quarantine, parental leave and other personal obstacles at work shall be used up to twenty times weekly working hours for the calculation of annual leave provided that the employee worked outside these obstacles at least twelve times weekly working hours or twenty times shorter weekly working hours.

Absence due to occupational sickness or work injury or maternity leave (parental leave of a male employee to the extent of maternity leave of a female employee) are included to their total extent.

3. Various principles to be taken into account

It is up to the employer to determine when the employee must take his/her paid leave, however the employer must inform the employee about the set date of paid leave **at least two weeks in advance**.

**PETERKA &
PARTNERS**



Karlovo namesti 671/24
110 00 Prague 1
Czech Republic

Adela Krbcova
krbcova@peterkapartners.cz

www.peterkapartners.com

Tel: +420 225 396 300



Czech Republic (cont'd)

The employer may determine paid leave even if the employee has not fulfilled the conditions for its use yet, but it could be presumed that he/she will meet them by the end of the calendar year/employment.

If a female employee asks to be granted paid leave so that it immediately follows her maternity leave (the same applies to a male employee requesting a period of parental leave to the extent of maternity leave), the employer is obliged to grant this request.

The paid leave shall be taken by the employee until the end of the calendar year, unless prevented by obstacles on the side of employee or for urgent operational reasons.

Upon the employee's written request and with regard to the employee's justified interests, an unused part of his/her leave, which exceeds 4 weeks (6 weeks for workers in education) may be transferred to the following calendar year.

If the employee cannot take his/her holiday until the last day of the corresponding calendar year, the remaining holiday shall be taken by the end of the following calendar year. The unused paid leave can be compensated by cash only when the employment is terminated.

An employee on paid leave is paid by a salary compensation amounting to his/her average earnings.

4. Time-off in other situations

Czech law also regulates other situations when employees are entitled to time-off, such as **sick leave, maternity/paternity/ parental leave, care leave or other various obstacles on the side of employee**; some of them are compensated, and some are not.





Germany

The general rule of "no work, no pay" also applies under German law. However, there are exceptions to this. They essentially relate to the payment of wages

- on vacation (see Federal Vacation Act)
- on public holidays (see Continued Remuneration Act)
- in the event of illness (see Continued Remuneration Act)
- in the event of temporary absence for other reasons (see Sec. 616 of the German Civil Code).

Remuneration during vacation

All employers are legally obliged to grant their employees at least 20 working days' vacation per year - based on a five-day working week (Sec. 3 Federal Vacation Act). Employee remuneration continues to be paid during the vacation period. The amount is calculated retrospectively according to the average earnings that the employee has received in the last 13 weeks before the start of the vacation (Sec. 11 (1) Federal Vacation Act). Employees can only take their vacation if the employer has expressly approved it. If the employee is absent without the employer having granted leave, this is grounds for extraordinary termination without notice. The scheduling of vacation depends primarily on the employee's vacation wishes (Sec. 7 (1) Federal Vacation Act). These are not taken into account in two scenarios: first, if they conflict with urgent operational interests, for example because there is a particularly high workload during the period (e.g. for retail sales staff in the run-up to Christmas) or second, if the desired leave conflicts with the leave wishes of other employees who have priority from a social point of view, for example parents of school-age children during the school vacations vs. childless employees (Sec. 7 (1) Federal Vacation Act). Once leave has been granted, it can only be taken back with the employee's consent. The employee should have planning security.

In principle, all vacation must be taken by the employee in the current calendar year (Sec. 7 (3) Federal Vacation Act). It is carried over to the first quarter of the following year if there are urgent establishment reasons (e.g. high workload) or personal reasons (e.g. illness) that prevent vacation from being taken in the current year (Sec. 7 (3) Federal Vacation Act). It can even be carried over to the first quarter of the year after next if the employee was absent due to illness during the entire calendar year and the first quarter of the following year (see Federal Labor Court, judgment of Aug. 7, 2012 - 9 AZR 353/10, para. 32). Leave does not expire at all unless the employer informs the employee in good time during the calendar year, stating the individual leave entitlement, to take this leave in the current calendar year so that it does not expire at the end of the year (Federal Labor Court, judgment of Feb. 19, 2019 - 9 AZR 423/16, para. 25). If the employment relationship ends and the employee still has remaining leave, this will be compensated (Sec. 7 (4) Federal Vacation Act).

Many employers grant more paid vacation than the law prescribes. Annual leave of up to 6 weeks per year is common in Germany. The rules of the Federal Leave Act do not have to apply to leave granted in addition to the statutory minimum leave. Independent regulations can be agreed. However, many employers do not do this, but agree that the Federal Leave Act applies.

GRUNDWERK Legal



Mainzer Landstraße 51
D-60329 Frankfurt am
Main

Armin Lange
a.lange@grundwerk.legal

grundwerk.legal

Tel: +49 (0) 69 7144960

Fax: +49 (0) 69 714496--40



Germany (cont'd)

Remuneration on public holidays

On a public holiday that falls on a working day, the employer must pay the employee the remuneration that he or she would have received if they had worked (Sec. 2 (1) Continued Remuneration Act).

Remuneration during illness

If employees are unable to work due to illness, the employer must continue to pay them the remuneration they would have earned if they had not fallen ill (Sec. 4 (1) Continued Remuneration Act). The employee should not suffer any financial disadvantage as a result of her or his illness. This obligation exists in the event of uninterrupted illness for a period of up to 6 weeks (Sec. 3 Continued Remuneration Act). With a few exceptions, this is possible several times a year. These statutory regulations are mandatory.

If the illness lasts longer than three calendar days, the employees must provide evidence of their illness in the form of a doctor's certificate (Sec. 5 (1) Continued Remuneration Act). In the past, the employee always had to be examined by a doctor in person for this purpose. Since December 7, 2023, a regulation that already existed during the COVID-19 pandemic has come back into force. Since then, employees with mild respiratory illnesses can take sick leave for up to five calendar days simply by calling a doctor. The aim is to reduce doctors' workloads.

The continued payment of wages during illness is of great importance to employers in Germany. Sick leave has been high for years. In 2023, for example, the average employee missed more than 20 working days a year due to illness.

Remuneration for temporary absence for other reasons

Sec. 616 of the German Civil Code (BGB) stipulates that an employer must continue to pay an employee's remuneration even if the employee is absent for a "relatively insignificant period of time", usually no more than 5 days, for no fault of their own. This concerns cases such as a serious illness or the death of a close relative, own wedding, birth of own child. Sec. 616 BGB can be contractually waived, which is usually agreed in the employment contract. Conversely, many collective agreements, agreements with works councils, policies or even employment contracts provide for longer periods of paid absence for the special cases as mentioned above.





Hungary

Employment legal matters are regulated in Hungary by the Act I of 2012 on the Labour Code ("**Labour Code**"). After the pandemic, due to the ongoing armed conflict and humanitarian disaster in the neighbouring Ukraine, there is a state of emergency in Hungary (until 25 November 2023 but it will be prolonged until 23 May 2024 based on a newly adopted act), and Government Decrees are regulating certain employment related matters.

Granting paid leave to the employees

According to the Labour Code, employees are entitled to at least 20 working days as paid leave. Extra vacation time between one-ten days applies, depending on the age of the employee. Further, additional days must be granted in certain cases, for instance, for employees with disabilities. Those with children under the age of 16 receive extra two, four or seven days depending on the number of children.

Fathers are entitled to ten working days of paternity leave (it can be taken within two months as of birth or adoption of child) and parents are entitled to 44 working days of parental leave until their child reaches the age three.

The employer must ensure that employees take their paid vacation days by the end of the respective calendar year. Only extra holidays based on the employee's age can be carried over to the next calendar year based on the parties' written agreement (that is only valid for one calendar year). Employees who started working in October of a given year, or later, can take their holidays until March of the next year. Under a temporary act due to the state of emergency, a limited scope of employees who participated in the fight against the Covid pandemic in 2021, are entitled to 10 extra days of holidays and they are entitled to carry over for three additional years, the proportionate part of their base and extra holidays from 2021.

Employees can determine when they wish to take of seven days of their paid vacation. The remaining days are allocated by the employer, after discussion with the employee. Employees should spend 14 consecutive days on vacation, unless it is agreed in the employment agreement or otherwise with the employer. Vacation can be taken by the employee or allocated by the employer, subject to an advance notification of at least 15 days, unless otherwise agreed. This can put employers in a difficult situation, as in case employees do not cooperate, vacation can start only after the expiry of such 15 days.

Alternatives of paid leave

Should the employer decide to stop its operation without allocating the vacation days, and order the employees not to come to work, this would qualify as a stand by period. During such time, employees are entitled to their salary – even if they do not work – and they have to be ready to take on work, subject to the requirements of the employer.

Cooperation obligation during sick leave

Under a recent decision of the Curia (Hungarian supreme court) the cooperation obligation applies to the employer and employee throughout the employment, including the duration of the employee's incapacity to work (i.e., sick leave) and long-term absence. This means, that the employee is obliged to inform the

Jalsovszky



MOM Park, Gellért Tower
H-1124 Budapest
Csörsz utca 41. Hungary

Ágnes Bejő
abejo@jalsovszky.com

Dóra Ágnes Nagy
dnagy@jalsovszky.com

Eszter Csáki
ecsaki@jalsovszky.com

www.jalsovszky.com/

Tel: +36 1 889 2800

Fax: +36 1 886 7899



Hungary (cont'd)

employer in a timely manner about his/her sickness and be available to cooperate with the employer (e.g., handover work equipment or company car in case of a longer sick leave if the employer instructs the employee), and lawfully the employee cannot voluntarily refrain from the communication with the employer even during the sick leave.





India

The regulatory landscape governing leaves in India is intricate, involving national and state laws, industry-specific regulations, and the introduction of the labor codes. In India, employees are entitled to various type of leaves based on their employment duration, business of the establishment and the specific policies implemented by their respective companies.

Employers are obligated to comply with the minimum leave requirements stipulated by national and state regulations. The Factories Act, 1948 ("**Factories Act**") and the Shops and Establishments Acts ("**S&E Act**") of the respective states in India provide a comprehensive framework for leave entitlements.

The exact number of leave entitlement can vary depending on the industry, the nature of work and state-specific amendments. The nature of business is a key consideration as the Factories Act governs the manufacturing units in India whereas the S&E Act of the respective states applies to a range of establishments such as shops, banks, companies, service units etc.

1. Earned Leaves

In India, earned leaves also known as privilege leaves are contingent on the duration of an employee's tenure. Employees are generally entitled to 15-20 (fifteen to twenty) earned leave in a year after completing a specific duration of employment with the establishment. However, the specific number of earned leaves is mandated by individual state regulations taking into account its local factors and specific requirements. For example, as per the S&E Act applicable in the states of Punjab and Karnataka, every employee who has been in employment for not less than 20 (twenty) days in a year shall be entitled to 1 (one) day's earned leave for every such 20 (twenty) days' work performed. The provisions under the Factories Act pertaining to the earned leaves are more or less similar to the provisions outlined in the respective S&E Acts of various states. For instance, workers who have worked for a period of 240 (two hundred and forty) days or more in a factory during a calendar year, are entitled to 1 (one) day of earned leave for every 20 (twenty) days of work performed by the worker in the preceding calendar year.

2. Sick Leave

Employees in India are also entitled to sick leaves. The number of sick leave entitlements is prescribed by establishments in accordance with the respective state's S&E Act. For example, Delhi has prescribed a minimum period of 12 (twelve) days for sickness or casual leave while the state of Punjab has prescribed a minimum period of 7 (seven) days sick leave in a year. However, there is no provision outlined in the Factories Act with respect to sick leave for workers.

3. Casual Leaves

In addition to the earned and sick leaves mentioned above, employees in India are also entitled to casual leaves. Casual leaves in India are generally granted for an unanticipated event or to address short-term personal needs and emergencies. The regulations governing casual leaves also differ from each state in India depending upon provisions outlined in the S&E Act of that

Ahlawat & Associates



Plot No. 66, LGF
#TheHub, Okhla Phase III,
Okhla Industrial Estate
New Delhi, 110020 India

Sheena Ogra
sheena.ogra@ahlawatassociates.in

Uday Ahlawat
uday@ahlawatassociates.in

www.ahlawatassociates.com

Tel: +91-11-41023400
Fax: +91-11-41012214



India (cont'd)

particular state. While a few states have specific guidelines on the minimum number of permissible casual leave days, few states remain silent on the matter, allowing employers to use their discretionary authority. For example, in the state of Uttar Pradesh, employees are entitled to a minimum of 10 (ten) days of casual leave in a calendar year. On the contrary, Karnataka's state regulations have prescribed earned and sick leave but are silent on casual leaves to be granted to the employees. Furthermore, the Factories Act does not have any provision with respect to the casual leaves available for workers.

4. Maternity Leave

Apart from the above-mentioned type of leaves, there is a provision in India for granting maternity leaves to the female employees over and above all the leaves they are entitled to by virtue of any law in force. Maternity leaves in India are governed by the Maternity Benefit Act, 1961 which mandates that the employers are obligated to provide a maximum of 26 (twenty-six) weeks of paid leave to female employees who have worked for a minimum of 80 (eighty) days in the establishment in the 12 (twelve) months preceding the date of her expected delivery. Furthermore, female employees are entitled to additional leaves beyond the 26 (twenty-six) weeks of maternity leaves, in case of illness arising out of pregnancy, delivery, premature birth, or miscarriage.

5. Compensatory Off

Subject to the provisions outlined in the S&E Act of the respective state, in cases where an employee is compelled to work on a weekly holiday or any authorized leave or public holiday, employers are obligated to provide compensatory leave in lieu thereof on another workday. The regulations governing such compensatory leave vary from state to state and in instances where they are not provided in the statute of any state, employers typically outline this provision explicitly in their policies as a general market practice.

Apart from the aforementioned leaves, employees are entitled to public holidays as outlined under the S&E Act of each state and as prescribed by the relevant authorities. Furthermore, employees may be entitled to additional leaves, subject to the occurrence of certain situations and conditions as outlined under various applicable legislations in India.

With the aim to amend the labor landscape, the Indian Government has introduced 4 (four) labor codes which are Occupational Safety, Health and Working Conditions Code, Code on Wages, Industrial Relations Code and Code on Social Security. For instance, an amendment has been introduced in the Occupational Safety, Health and Working Conditions Code with respect to the earned leaves available for the workers under the Factories Act. Currently, as previously stated, the workers as per the Factories Act are entitled to earned leaves only after completing 240 (two hundred and forty) days or more in a factory in a calendar year. However, the amendment through the codes has reduced this time frame from 240 (two hundred and forty) days to 180 (one hundred and eighty) days or more. However, it is important to note that the above-mentioned labor codes have received parliamentary approval but are yet to come into force in India.





Italy

Italian law grants to employees various types of paid leaves (holidays, sickness leave, maternity, etc.).

1. Annual paid holidays

Employees are entitled to a statutory minimum of four weeks of paid leave per year.

Collective labor bargaining agreements can establish "more favorable conditions".

Employees do not have to accumulate a minimum number of holidays before being able to use them. Employees can generally use their holidays as they are earned, but specific rules regarding the timing of taking vacation days might be outlined in the employment contract or collective labor bargaining agreement.

Unless otherwise specified, paid leave must be used for at least two weeks within the accrual year or, if not possible, the remaining time must be used within the 18 months following that year.

If accrued vacation days are not taken within the legally prescribed period or as per the collective labor bargaining agreement, and if it's no longer possible to use them (for example, due to the termination of the employment relationship), the employee is entitled to the corresponding compensation (known as the "unused holiday pay").

The employee accrues paid leave even during the period of sick leave, regardless of (i) whether sickness was work-related or not and (ii) employment seniority. The employee does not need to have a minimum seniority in the company. The terms of accruals are the same when the employee is regularly working.

2. Employees' compensation while on sick leave

Italian law establishes that employees who are absent due to illness are entitled to the preservation of their job position and to receive either their regular salary or an allowance, provided that the absence does not exceed the maximum period established by collective bargaining labor agreements (referred to as the "grace period"), generally capped at a maximum of 180 days per calendar year. The grace period may last up to 12 months depending on the employee's category, the type of sickness or the applicable collective labor bargaining agreements.

For most of the employees, the sick leave is paid in part by the employers and in part by the national social security system (the INPS). However, in certain business sectors (e.g., the Bank and Credit sector) and for managers (Dirigenti) sick leave is entirely paid for by employers.

FPB Legal



Via Fatebenefratelli no. 22
Milan, 20121 Italy

Martino Canal
mcanal@fpblegal.com

Francesco Antonio
Stamerra
fstamerra@fpblegal.com

<https://www.fpblegal.com/en/>

Tel: + 39 02 7273061
Fax: + 39 02 89750687



Italy (cont'd)

Generally, statutory sick pay starts on the fourth day of illness. From the 4th to the 20th day of illness, the statutory sick pay amounts to 50% of the average daily pay. This percentage increases to 66% between the 21st and 180th day. Many collective bargaining labor agreements provide that employers must integrate the statutory sick pay up to 100% of the average daily pay.

Throughout the period of sickness, the employment relationship remains legally binding. As a result, all employee entitlements (such as seniority, vacation days, permissions, etc.) continue to accrue.

3. Employee protection against dismissal during sick leave

During the sick leave and up until the expiry of the grace period established by the applicable collective labor bargaining agreements, employers can dismiss employees on sick leave only for just cause.

Once the grace period is ended the employee who is still on sick leave can be terminated for being unable to work beyond the grace period or for any other business or organizational reason.

Under certain conditions employees on occupational sick leave (meaning that they are unable to work due to a work-related illness) cannot be dismissed even when the grace period has expired. In fact, absences of the worker resulting from workplace injury or occupational disease are not counted towards the qualifying period in two instances: (i) when such absences stem from inherent harmful factors in the execution of job tasks, inherently present in the work environment, and are hence linked to the performance of work activities (e.g., a lung disease contracted in a painting facility); (ii) when the employer is responsible for such harmful and detrimental conditions, being in breach of mandatory provisions of law regarding health and safety in the workplace.

4. Other types of paid leave available to employees under Italian law

Employees are entitled to several other types of paid leaves, the most common of which are the following:

- Maternity/Paternity leave.
- Parental leave.
- Marriage leave.
- Mourning leave.
- Study leave.
- Care givers leave.
- Electoral leave.



Scotland

In the United Kingdom, employees are entitled to a statutory right of paid leave, otherwise known as statutory leave entitlement or annual leave. This is a legal right which provides employers with a minimum requirement they must implement when considering employee leave and pay. Whilst this note focuses primarily on paid holiday leave, there are multiple statutory schemes in place which set out the position of paid leave more generally in the UK. It is important for both employers and employees to keep up to date with such information.

Employees may be entitled to additional leave or benefits under the terms of their contract of employment, if it is provided for that they will receive more than their paid leave entitlement. This is often known as 'enhanced' or 'contractual' holiday entitlement.

- **Who is entitled to paid leave?**

Employees have the right to paid leave regardless of if they work full-time, part-time or under a zero-hours contract. The entitlement is dependent on the amount of days (or hours) worked in addition to any extra agreements in place under the employee's contract of employment.

- **What is the statutory entitlement for holiday leave?**

The majority of workers who work five days a week are entitled to at least a period of 5.6 weeks' (28 days) paid holiday leave a year. Part-time workers are also entitled to at least 5.6 weeks' paid holiday on a pro rata basis. For example, if an employee works 4 days a week, they are entitled to at least 22.4 days' leave a year (4 x 5.6). Those who work irregular hours, e.g. shift workers, are entitled to paid time off for every hour they work.

The statutory entitlement is limited to 28 days. This means that employees who work more than five days a week are still only entitled to 28 days' paid leave.

- **Are bank holidays included in the statutory entitlement?**

Bank or public holidays do not have to be given as paid leave. Employers are able to choose if they wish to include bank holidays as part of the statutory paid leave.

- **Carrying over paid leave and COVID-19:**

An employee's contract of employment will determine how many days' leave they can carry over into the next year. If an employee gets 28 days' leave, they are able to carry over a maximum of 8 days. If under their contract they are entitled to more than 28 days' leave, their employer may allow them to carry over any additional untaken leave.

Coronavirus (COVID-19) does not affect workers' entitlement to holiday pay and leave, except when carrying over leave. Employees may be able to carry over untaken leave into the next 2 years if they cannot take it because their work is affected by coronavirus. There are certain circumstances where this may be applicable, for example, where there will be staff shortages if too many employees take their leave before the end of the leave year. If an employee is able to take leave, the standard rules for carrying over leave will apply.

If a worker cannot take all of their leave entitlement because they're already on a different type of leave (for example sick, maternity or parental leave), they can

**Miller Samuel Hill
Brown**



The Forsyth Building
5 Renfield Street
Glasgow, G2 5EZ
Scotland

Marie Macdonald
mem@mshblegal.com

Amy Emmerson
ale@mshblegal.com

www.mshblegal.com
Tel: +44 (141) 221 1919
Fax: +44 (141) 221 3796



Scotland (cont'd)

carry over some or all of the untaken leave into the next leave year. An employer must allow a worker to carry over a maximum of 20 of their 28 days' leave entitlement if the worker could not take annual leave because they were off sick.

- **Enhanced or contractual leave:**

As aforementioned, some employers may offer enhanced or contractual leave, paid in addition to the statutory requirement. An employer can choose to offer more leave than the legal minimum, where the rules that apply to statutory leave do not apply to the extra leave. Such policies may cover paid holiday leave but may also be in place for additional leave policies, such as maternity leave or sick leave. This information may be expressly contained within an employee's contract of employment or staff handbook, or may be provided from Human Resources.

- **Are there other types of paid leave available to employees?**

Under UK law, there are many other paid leave options available to eligible employees, including but not limited to:

1. Statutory Maternity Leave (SML) provides employees with 52 weeks paid leave, made up of 'Ordinary Maternity Leave' for the first 26 weeks and 'Additional Maternity Leave' for the last 26 weeks.
2. Statutory Maternity Pay (SMP) is paid for up to 39 weeks. Employees are entitled to 90% of their average weekly earnings (before tax) for the first 6 weeks, then £172.48 or 90% of their average weekly earnings (whichever is lower) for the next 33 weeks.
3. Statutory Adoption Leave (SAL) allows employees to take up to 52 weeks' statutory paid leave. The first 26 weeks is known as 'Ordinary Adoption Leave' and the last 26 weeks as 'Additional Adoption Leave'.
4. Statutory Adoption Pay (SAP) for employees during this time is 90% of their gross average weekly earnings for the first 6 weeks; then £172.48 a week or 90% of their gross average weekly earnings (whichever is lower) for the next 33 weeks.
5. Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP) which provides parents with an entitlement of up to 50 weeks of leave and up to 37 weeks of pay between them. ShPP is paid at £172.48 a week or 90% of the employee's average weekly earnings, whichever is lower.
6. Statutory Sick Pay (SSP) which is paid for up to 28 weeks at a rate of £109.40 per week.

- **What are the consequences for employers who do not pay the statutory entitlement?**

Employers must comply with their statutory obligations in relation to statutory paid leave. If an employee believes this obligation has been breached and that their right to leave and pay are not being met, they may pursue an internal grievance or submit a claim to the Employment Tribunal.





Uganda

Under Ugandan employment law, it is evident that annual leave accords employees an opportunity to take paid time off from work to rest and re-energize. The country's Industrial Court has further emphasized the same objective in **Mbiika Vs Centenary Bank (Labour Dispute Claim No.023 of 2014) [2018]** where it was stated that section 54 of the Employment Act 2006, obliges employers to grant rest days during a calendar year for purposes of making employees rejuvenate and work better.

The Employment Act provides for paid annual leave of 21 working days to all employees at the rate of 7 days for each period of continuous 4 months of service. The employment Act stipulates that the time to take annual leave has to be agreed upon between the parties. This is only but a minimum threshold. As such, it is open for employers to provide annual leave days which exceed the statutory minimum threshold.

Under the Public Service Standing Orders, Annual leave is a right only applicable to a public officer employed on full time basis and when due, it has to be obligatory. Unlike in the private sector, annual leave for public officers depends on the salary scale. In the Public Service, Public Officers on U2 scale and below enjoy annual leave of thirty-six (36) days whereas those on U8 scale enjoy annual leave of twenty four (24) days.

GRANT OF LEAVE

In order to get annual leave, one has to apply for it. Where the employer refuses to grant leave, he or she has to pay in lieu of leave, however it should be noted that any agreement to relinquish or forgo an employee's right to annual leave for payment in lieu of leave is null and void. Further, failure to apply for leave within a given year implies that the employee has forfeited his right to leave and cannot claim it after termination. Numerous decisions by the Industrial Court in Uganda have upheld the above principles.

In **Mwaka v Road Master Cycles (U) Ltd (Labour Dispute Claim No. 155/2014)**, it was stated that, ordinarily an employee is expected to apply for leave and chose either to take it or be paid in lieu and if he does not apply for leave when he is aware of his right of leave, the presumption is that he/she has voluntarily denied him/herself leave and he cannot claim it unless his employer consents to it.

It was further held in **Nyakabwa J. Abwoli Vs Security 2000 Ltd (Labour Dispute No.108 of 2014)** that leave for an employee is an entitlement that can only be taken away expressly by the employee himself or herself. The mere fact that an employee has not applied for leave, unless embedded in the Human Resource manual or otherwise brought to the attention of the employee, does not work against him. This is the reason some employers remind their employees to take leave.

It is important to note that an employer cannot unreasonably send an employee on forced leave. In **Kyazze Vs Busoga College Mwiri (Labour Dispute Reference No. 143 of 2016)** it was held that, although an employee is entitled to leave in accordance with the Employment Act, such leave is ordinarily granted when the employee applies for it and unless there are special circumstances, an employer may not force an employee to go on leave. "Unless there is evidence to the fact that the employee applied for leave and the employer refused to grant the same, it is a given in our view that the employee was comfortable without leave and therefore he is estopped from claiming payment in lieu of the same once the he/she is terminated."

LEAVE PLANNING BY THE EMPLOYER

The purpose of applying for leave is for proper planning by the employer. This principle was emphasized by the Industrial Court in **Lamunu v Krotchet Employees SACCO and Krotchet Kids Uganda (Labour Dispute Claim NO.006/2016) [2017]**. The Court held that whereas leave is a right of an employee, for planning purposes however, an employee is always expected

BNM Advocates



Plot 23, Lumumba
Avenue
6th Floor Soliz House
Kampala, Uganda

Boaz Kaawe
kaaweboaz@gmail.com

bnmlaw.org/

Tel: +256 414 252 652



Uganda (cont'd)

to apply for his/ her leave at a certain period during a calendar year so as to allow the employer arrange for somebody to perform the duties of the employee on leave. In the absence of the employee showing interest in taking his/her leave when he or she is aware of this right, he or she is taken to have willingly forfeited his or her entitlement.

LEAVE IS AN ENTITLEMENT AND NOT A PRIVILEGE

In **Mbiika Vs Centenary Bank (Labour Dispute Claim No.023 of 2014) [2018]**, it was held that, leave within a calendar year is an entitlement to an employee. This means whether any organization has a leave roster or leave plan or not, an employee will have his leave during a calendar year. It is the duty of the employer to put a system in place that ensures that each employee takes leave in a given calendar year and the absence or weakness of such a system does not at all affect the entitlement of the employee to his leave. It should be noted that grant of leave is a fundamental term of the contract and refusal to grant it constitutes a breach which may result in constructive dismissal by the employer.

Court in this case held that grant of leave is not only an entrenched term of the contract of service but a fundamental term in such a contract. Following the decision in **Nyakabwa J. Abwooli Vs Security 2000 Ltd LDC 108/2014**, the Court held that, failure to grant leave to the applicant within the calendar year made the respondent guilty of conduct that went to the root of the contract and therefore entitled the claimant to terminate the contract under section 65 (1) (c) of the Employment Act by resignation which necessarily was not voluntary and therefore constituted constructive dismissal.

EMPLOYEE'S REMEDIES IN LIEU OF LEAVE?

In cases where employees fail to take up their annual leave entitlement, the employer is only obligated to pay in lieu of leave where he or she refuses to grant the leave after the employee has applied for it. This was the finding of the Industrial Court in **Ochwo v Appliance World Limited**.

The alternative option is for the employer to defer the employee's leave to another year. However as held in the **Mbiika Vs Centenary Bank case**, an employer can only defer an employee's annual leave to the following calendar year with the consent of the employee and in such a case the employee will take leave for both the previous calendar year and the current calendar year.

CAN AN EMPLOYEE BE TERMINATED FOR APPLYING FOR AND/OR TAKING LEAVE?

Section 75(b) of the Employment Act (supra) provides that an employee cannot be terminated for proposing or taking leave to which, such employee is entitled. In **Florence Mufumba Vs. UDB Bank (Labour Dispute Claim No.138/2014)**, it was held that, "where an employee is entitled to take leave and his or her employer is made aware of the dates and of the intention of the said employee to take the leave, and the employer raises no objection as to the proposed dates, once such employee takes his or her leave, the employer is estopped from denying that such leave was authorized. It follows therefore that the said employer cannot impose disciplinary action against such employee."

CONCLUSION.

It should be noted that employers owe their employees a right to have their leave much as employee also have a responsibility to advance their desire to have these paid rest days. Employer are advised to plan accordingly to allow compliance with their legal obligations and employee are also encouraged to be shrewd with their right.





United States – Delaware

On May 11, 2022, Delaware established the “Healthy Delaware Families Act,” (19 Del. C. § 3701 *et seq.*), a “Family and Medical Leave Insurance Program” that will be managed by a new division in the Delaware Department of Labor (“DDOL”). The common title for this watershed law is the “Delaware Paid Family Leave Act,” or “PFMLA.” The PFMLA requires covered employers to provide paid leave to eligible employees for qualifying events and conditions. Regulations were implemented on July 11, 2023, have since been revised, and further regulations are expected.

The official implementation date for paid leave coverage is January 1, 2026 (on which date, paid leave must be available to eligible and qualified employees), however there are several earlier milestone dates in 2023, 2024, and 2025. The DDOL has been promoting information and education about the law and required actions by employers. To that end, the DDOL is developing several web portals for benefit application and management, and information about required coverage and eligibility for both employees and employers. The portal for benefit applications and leave management will be central to administration of all covered leave under the PFMLA and will be the required mechanism for all employee leave applications.

The PFMLA provides for three lines of coverage: 1) parental leave, which includes coverage for birth, adoption, or the placement of a child through foster care and care for children occurring within the first year of birth, adoption, or placement; 2) medical leave, which covers the employee’s own serious health conditions that make them unable to perform the functions of their position, and caring for a family member with a serious health condition; and 3) qualifying exigency leave which applies to situations related to caring for a family member related to qualifying military leave. The areas of coverage and definitions for qualifying circumstances and eligibility criteria closely follow the federal Family and Medical Leave Act (FMLA).

The maximum amount of paid leave is 12 weeks for parental leave in a 12-month period, and 6 weeks for personal medical leave, family caregiving leave, and qualifying exigency leave in a 24-month period. If two parents are employed by the same employer, and both are entitled to parental leave, the employer may limit the total parental leave for both parents to 12 weeks.

The benefit value to employees is to equal 80% of the employee’s average weekly wages, with the minimum no less than \$100 per week, and the maximum no greater than \$900 per week through 2027. After 2027, the maximum benefit may be reviewed and tied to the Consumer Price Index for the greater Philadelphia-Camden-Wilmington metropolitan area.

The PFMLA is particularly noteworthy because it applies to employers in Delaware with fewer employees than the jurisdictional threshold of FMLA. Employers with at least 10 full time or part time qualifying employees in Delaware within the preceding 12 months must comply with the PFMLA, unless the employees do not meet the threshold for being employed in Delaware, *i.e.*, they are not “qualified.” Employers with 9 or fewer employees may choose to be covered under the law or remain exempt.

Employers with 25 or more qualified employees must provide the full 12 weeks of parental leave in each application year and 6 weeks for all other lines of coverage. Employers with 10 to 24 employees are only subject to the parental leave provisions. However, such “small” employers may reduce the amount of parental leave coverage from 12 weeks to 6 weeks if they apply to the DDOL for a reduction by January 1, 2024, and maintain their small employer status through ongoing census lookback periods. Any such reduction may only be retained for 5 years, beginning January 1, 2026.

To be eligible for leave coverage, in addition to being a qualified employee as defined

Connolly Gallagher LLP



1201 North Market
Street, 20th Floor
Wilmington, DE 19801
United States

Timothy Holly
tholly@connollygallagher.com

Matthew Boyer
mboyer@connollygallagher.com

Aaron Shapiro
ashapiro@connollygallagher.com

Lauren DeLuca
ldeluca@connollygallagher.com

Anna Brousell
abrousell@connollygallagher.com

www.connollygallagher.com/

Tel: +1 (302) 757-7300



United States – Delaware (cont'd)

under the law, employees must have worked for the covered employer for at least 12 months and worked 1250 hours in the most recent 12 months. Part time employees (those who work less than 25 hours per week) and those expecting to work less than 12 months, can apply to waive coverage and be exempt from the contribution requirement. Both the employee and employer must execute a written waiver for an employee to waive coverage.

While there are exceptions and exclusions, a “qualified” employee is one that primarily reports to work in Delaware. “Primarily” is defined as working at least 60% of an employee’s work hours physically in Delaware each calendar quarter. Individuals who are physically outside of Delaware but work through remote / virtual methods may be a qualified employee depending on the physical location of other employees they may work with. For example, if a remote employee spends at least 60% of their time working with a team that is physically located in Delaware, they would be a qualified employee, and eligible for leave benefits for which the employee will be assessed for coverage.

Funding for paid leave will be generated by employer contributions based on 0.8% of covered employees’ eligible wages, at least through 2027, after which the DDOL is empowered to assess coverage amounts and contribution rates to determine if payments for covered leave usage contribution rates should be increased based on defined market factors. Employers are authorized to assess up to 50% (0.4% of covered wages) of the contributions to their employees. Employers are not obligated to pass any portion of the assessment, or to assess up to the 50% limit. Mandatory “contributions” by employers begins January 1, 2025, which also marks the beginning of new permissive wage withholdings from employees, to achieve the funding obligation imposed on employers.

There are three options for how the lines of coverage may be created and managed. All options must provide the same level of benefit coverage. The default is that the State, through the DDOL, will establish and administer all lines of coverage. If an employer chooses no other option, their eligible employees will be covered under the States plans. A second option is that private insurers can design and offer plans that are equivalent to the State’s plans. Should private insurers enter this marketplace, they will have some ability to design their cost structures on each employer’s rating history. The third option is that employers may self-insure for one or more lines of coverage. If employers opt to self-insure, they will be required to maintain a bond in the amount of the value of coverage related to the line of coverage and their employee’s aggregate covered wage levels. Regardless of the method of coverage, all leave applications will be through the DDOL’s centralized portal.

The law provides a narrow pathway for employers to “grandfather” leave benefits that were in existence as of May 10, 2022 and have remained in existence without change. These plans must provide at least 90% of the benefits for the respective line of coverage as specified in the law. The window to apply for preservation of existing plans closes on December 31, 2023. If an employer chooses to preserve such plans, they may only be preserved for a period of 5 years, from January 1, 2026, to December 31, 2030. The plans must be maintained without change for the 5-year period.

Employers must allow covered leave to be used on a consecutive basis and intermittently, e.g., employers can be required to allow a reduced daily schedule for the period of leave. Benefits are paid accordingly. If an employee requests leave on a reduced schedule, the shortest leave that can be approved will be one (1) full workday.

As a condition to accessing coverage, an employee must provide a certification from a healthcare provider which includes the probable duration of the serious health condition. Employees may also be required to provide other information as the Division may determine. Employers may request recertification, but not more than once every 30 days. It is presumptively unreasonable for an employer to request a recertification prior to the expiration of the leave period set forth in the initial medical certification unless the employer





United States – Delaware (cont'd)

has a reasonable basis to do so.

The law essentially shifts the burden to employers to make determinations about an employee's leave eligibility and qualification, with legal risk created for decisions determined to be incorrect. Causes of action are created for claims of discrimination and retaliation.





United States - Massachusetts

Under Massachusetts law, employees are eligible for two different types of paid medical leave – Earned Sick Time and Paid Family and Medical Leave. Below is a discussion of both forms of leave.

Earned Sick Time

Nearly all Massachusetts employees are entitled to take up to 40 hours per year of accrued sick leave from work under the state's Earned Sick Time (EST) Law. For employees of businesses with 11 or more employees, this earned sick time must be paid by the employer. Employees of companies with fewer than 11 employees are still entitled to EST, but the leave may be unpaid. Under the EST Law, employees must accrue one hour of EST (paid or unpaid) per 30 thirty hours worked, which they may use to care for their own medical condition or that of an immediate family member (spouse, child, parent, or parent-in-law), or attend their own medical appointment or that of an immediate family member, among other reasons.

Many employers in Massachusetts offer paid time off (PTO) policies that provide more than 40 hours of paid leave annually, which the employee can choose to use as sick time, vacation, or personal time. This practice is permissible, as long as full-time employees receive at least 40 hours of sick time per year. Employees can be required to provide advance notice, except in emergency situations, but cannot be compelled to disclose details of their illness.

Employers may not retaliate against employees for using EST to which they are entitled.

Paid Family and Medical Leave

Since 2021, Massachusetts employees have also been eligible for paid leave to care for their own serious medical condition or that of a family member through the Paid Family and Medical Leave program (PFML) administered by the state Department of Family and Medical Leave. Employees must apply for PFML through the state and must provide documentation verifying their condition.

Most employees are entitled to up to 26 weeks of combined family and medical leave per year, as long as leave is taken for a qualifying reason. Qualifying reasons include caring for an employee's own serious health condition; caring for a family member's serious health condition; bonding with a child after birth, adoption, or placement; and leave needed to attend to certain exigencies related to a family member's active-duty military service.

Employees receive weekly benefit payments. The benefit payment amount is based on a number of factors, including the employee's average weekly wage, the average weekly wage for Massachusetts workers, and the type of leave being taken. As of November 1, 2023, employees are permitted to "top off" or supplement their benefit amount using accrued paid vacation time, sick time, or PTO from their employer, such that they can bring the amount of their weekly payment up to an amount equivalent to their full weekly wage.

Upon the conclusion of PFML leave, employees must be restored to the same position or to an equivalent position with the same status, compensation, and seniority. However, employers are not required to restore employees who would have been laid off due to economic or other changes at the company had the employee not been on leave. Similarly, there is no requirement to restore employees whose employment was temporary and who would not otherwise have continued to be employed after the leave period.

Employers are prohibited from retaliating against employees who apply for and/or exercise PFML leave.

**Davis Malm &
D'Agostine**



One Boston Place
Boston, Massachusetts
02108
United States

Tamsin R. Kaplan
tkaplan@davismalm.com

Michelle Cassorla
mcassorla@davismalm.com

www.davismalm.com

Tel: +1 617.367.2500

Fax: +1 617.523.6215

