

The acquisition of paid holiday entitlement during sick leave now provided for by French law

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Act no. 2024-364 introduces a number of provisions to bring French law into line with European Union law, notably on the employee's acquisition of paid holiday entitlement during sick leave. The law was finally adopted by the Senate on 9 April, and subsequently by the National Assembly on 10 April 2024. In order to comply with European law, French law now stipulates that any period of sick leave is considered as actual working time, thereby allowing the employee to acquire paid holiday leave. Certain limitations have however been applied to avoid unlimited claims to the accumulation of paid leave retroactively over several years.

These provisions have been in force since the publication in the Journal Officiel on 22 April 2024.

Until now, any periods of absence due to non-occupational illness or accident, and periods of absence due to occupational injury or illness which exceeded one year, were not taken into account when calculating holiday entitlement under the French Labour Code. These exclusions were deemed to be contrary to European Union law following the Court of Cassation rulings of 13 September 2023.

Since 22 April 2024, periods during which the employment contract is interrupted as a result of an occupational accident or illness including those exceeding one year, as well as periods of absence due to non-occupational illness or accident, are all now considered as periods of actual work for the purposes of determining an employee's entitlement to paid holiday leave.

While the Act provides that any period of sick leave entitles the employee to paid holiday leave, it also limits this entitlement to 2.5 days per month in the case of absence due to an occupational accident or illness (i.e. up to 30 days per year in the first year of absence, and in subsequent years); and to 2 working days per month in the case of non-occupational related absences, up to a maximum of 24 working days per reference year (i.e. a maximum of 4 weeks).

Additional days of paid leave acquired in application of the provisions of the collective bargaining agreement may not result in the total number of days of paid leave exceeding 24 working days over the reference period, except where a more favourable collective agreement applies in the case of non-work-related absences.

Furthermore, the employer will now have an obligation to inform employees of their paid leave entitlement in the event of absence due to illness or accident, and this within one month of the employee's return to work. Accordingly, it will be obligatory for the employer to communicate the number of days of leave available to the employee and the date up to which they may be taken.

This information may be communicated to the employee by any means that provides a dated record of receipt, in particular through the employee's pay slip.

This new law in France provides for an application of a 15-month statutory carry-over period to allow employees to use any paid holiday entitlement which is not taken during the reference period of sick leave due to illness or accident. It should however be noted that if this carry-over period has not expired when the employee does return to work, it will be temporarily suspended until such time as the employer has formally informed the employee of his or her holiday entitlement.

It should also be noted that in the case where an employee's sick leave is of at least one year, the applicable carry-over period can consequently both start and expire while the employee is still absent from work. This provision prevents a potential unlimited accumulation of holiday leave entitlements over several consecutive reference periods of sick leave.

The law also provides for a change in the rule as to how paid holiday leave is calculated (i.e. the usually applied one-tenth rule) in the event of sick leave: such absences are treated as giving rise to

remuneration, but the latter is calculated up to a limit of only 80%.

Furthermore, and subject to any subsequent court rulings or more favourable collective bargaining agreements applied on the date on which paid holiday entitlements are acquired, these new provisions relating to the acquisition of paid holiday leave during non-occupationally related periods of illness or accident are retroactively applicable as from 1 December 2009.

This retroactive measure does not apply to the abolition of the time limit for acquiring rights for employees off work due to occupational injury or disease.

An employee may therefore claim holiday entitlement which was previously not granted for periods of sick leave between 1 December 2009 and the date on which the new law is applicable.

The law does provide, however, as a transitional measure, that any claims for holiday entitlement made by an employee in respect of the execution of their employment contract must be submitted within two years of the entry into force of the new law.

Employees currently in actual employment will therefore have 2 years from the date of publication of the law to claim their holiday leave entitlements.

In the case of employees who have left a company, the three-year statute of limitations applies, thereby precluding any back claims by employees who left the company more than three years previously (Article L.3245-1 of the French Labour Code).

A before/after reference table outlining the law of 22 April 2024 (officially known as the DDADUE 2 Law) which came into force on 24 April 2024

	Arrêt de travail pour AT/MP		Arrêt de travail pour maladie ou accident non professionnels	
	Before	Since DDADUE 2	Before	Since DDADUE 2
Acquisition of paid holiday leave taken into account	Yes, subject to a limit of one year's absence	Yes, without any limit applied		Yes, without any limit
Number of paid holiday days acquired during the work stoppage	2.5 days / month up to 30 working days per year	2.5 days / month up to 30 working days per year	Not provided for by law but imposed by case law (ruling of 13 September 2023)	2 days / month up to 24 working days per year
Employer's obligation to formally inform the employee of his holiday entitlement on return from a period of sick leave	No	Yes	No	Yes
Carryover of holiday leave not taken previously	Imposed by case law No legal limit	Carryover period limited to 15 months as from the end of the reference period of sick leave	Imposed by case law No legal limit	Legally imposed Period limited to 15 months as from the end of the reference period of sick leave

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