



The end of the year is approaching – it is time to take account of the number of the remaining days of the leave entitlement

The year 2010 is soon coming to its end, at some companies, the production will be stopped within a few days, whereas, at other corporations the large-scale works are just getting started now. Do you wonder which employees have already taken their annual leave entitlement, and which of them do still have many days of leave left? Which provisions shall executives take into consideration, when it comes to deciding about the allocation of leave or to approve it? Through our present newsletter we try to help you by providing a short, brief answer to the above question.

In the public understanding there is often a false view about the taking of leave entitlement. Namely the scheduling of leave in principle belongs to the duties of the employer, whereas it qualifies only to somewhat limited extent as the right of the employee. The Labour Code provides unambiguously that the timing of leave shall be scheduled by the employer (indicated at least one month prior to its commencement) and only the one-fourth of the basic leave entitlement shall be allocated as requested by the employee (indicated at least fifteen days in advance). Considering these provisions, for an employer it may well worth rethinking the order of allocation of leave in the future.

According to the current rules of the Hungarian labour law, the leave entitlement of the employee shall be allocated in the year in which it is due. In fact, what can be done if the organization of work cannot be arranged so that all employees are able to take their leave entitlement in compliance with the above rules? The act, by providing some leave-way, provides for the following possibilities:

1. The primer and from a legal perspective the most obvious solution may be that the employee's leave begins in December and it extends to January. For this option to be applicable, two important conditions shall be fulfilled: on the one hand the leave shall be commenced in the year in which it is due and it shall extend continuously, without interruption to the following year (i.e. the employee shall be on leave at least on 31 December), on the other hand only a maximum of five working days may be transferred to the following year. In this case it is considered by law as if the leave were allocated in the year in which it is due, and thus the employer does not breach the law.
2. In the event of economic interests of particular importance arising in the current year, or if reasons directly and seriously affecting the employer's operations has arisen or may arise, it is possible to schedule the leave in the year following the year in which it is due. In fact in this case it shall be allocated at latest until 31 March of the following the year, or until 30 June of the year following if explicitly so stipulated in the collective agreement. Only such circumstances may qualify as this kind of extraordinary economic interest – which render it impossible to allocate the annual leave in compliance with the legal provisions – which is independent of the organization of work. Furthermore a reason affecting the employer's operations shall be especially the prevention or mitigation of any danger of accident, natural disaster (out of which we got our share more than enough this year) or serious damage or of any imminent and serious danger to human life, health or physical integrity. In fact even in the event of reference to the above reason, such principles of labour law as e.g. the prohibition of improper exercise of rights, cannot be set aside. Because if the employer can still remedy, in the rest of the year, the situation arising due to such reasons (i.e. the leave could be allocated in the year in which it is due) by solutions relating to work organization — e.g. by changing the work-schedule —,
3. There might be events in a company's life when the scheduling of the annual leave in the year in which it is due becomes impossible because of the employee's illness or another unavoidable restraint affecting the employee's person. According to the legal provisions in such events - in order that the employer be exempted from the detrimental consequences -, the leave shall be allocated within a period of thirty days following the cessation of such restraint. In this case it is worth to pay attention to two important circumstances: on the one hand the leave shall be provided uninterruptedly (in case it has

been commenced, it is not possible to divide it into parts), on the other hand, the leave shall not necessarily be allocated directly after the cessation of the circumstance, it is sufficient to commence it within thirty days. This means practically that if the employee becomes ill in December (before commencement of his leave), than his leave remaining from the previous year shall be allocated in whole within thirty days following reaching the condition suitable for work in January.

than failure to allocate it in the due year would be contrary to the proper exercise of rights. Unfortunately we are still waiting for the detailed rules relating to this issue to be prepared, nevertheless in any case it is advisable to properly document at the time of arising of the ground in question, the circumstance that rendered impossible the timely scheduling of the leave. If such event did not arise over the year until now, than the employer is able to avail himself of this opportunity only in case of an eventual fresh ground arising in the remaining couple of days of this year.

It must be pointed out that whereas in the first case the leave may be transferred to the following year only to the extent of maximum five working days, in the second case one can avail himself to those possibilities to the extent of one-fourth of the basic leave entitlement – i.e. an additional 5-7 days. Not even in the event of an eventual economic interest of particular importance is it possible to transfer any more days to the following year, furthermore, it is not possible either to stipulate different provisions in the collective agreement.

Should the employee still have leave entitlement after the exploitation of the foregoing options, than the failure to schedule the leave on the employer's side qualifies as breach of the labour law, which can be sanctioned in case of employment control check. Considering that the taking of leave belongs to the rights of the employee, failure to take all of his leave entitlement in the year in which it is due must not have detrimental consequences on him. According to the Labour Code in such event the employee is entitled within the limitation period (three years) to request for scheduling of the leave, or in case of termination of employment, to request for financial compensation instead.

The content of our present newsletter is of general information; it shall not qualify as legal counselling, as with respect to the specific circumstances of an individual case and to the ongoing/continuous amendment of the legal provisions in force it may eventually be needed to adopt a position different from the foregoing. Should you have any questions, specific problems, please contact us at budapest@bpv-jadi.com.

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