

Annual leave (3/21/19)

A company does not want to accrue any unused vacation and orders its employees to use it. What do you do if an employee keeps coming to work during their vacation and refuses to use it? Is the employer required to cancel the vacation order and pay wages if the employee is working?

Leave entitlement under the Labour Code

The employer is responsible for providing safe and healthy working conditions. Granting annual leave means not only exercising one of the employees' constitutional rights¹ but also providing a key element of a healthy environment at work, so the employer's participation in efficiently exercising this right is crucial.

Section 150(1) of the Labour Code provides that paid annual leave should be granted at a specified time each year –

1. by agreement between an employee and the employer, or
2. according to a vacation schedule the employer has drawn up after consulting employee representatives.

Section 149(1) of the Labour Code provides that a vacation should be at least four calendar weeks, excluding public holidays. Section 149(3) provides that only in exceptional cases where granting the full paid annual leave to an employee in the current year may adversely affect the company's normal course of business, a part of the vacation may be carried forward to the following year with the employee's written consent. In that case, the vacation taken in the current year should be at least two consecutive calendar weeks. The carryforward should be added as far as possible to the next year's vacation. A carryforward is allowed for one year only.

In normal circumstances, the employer is required to encourage employees to use their annual leave entitlement. And since section 149 of the Labour Code makes it illegal to pay a cash compensation for any unused vacation (unless the employment is terminated) and the annual leave entitlement is granted by law, any kind of agreement between employer and employee against taking a vacation is void.

Legal consequences of an employee's refusal of vacation

The Labour Code is silent about an employee's voluntary refusal of paid leave, so this could be analysed in the light of sections 150 and 101 of the Labour Code.

If the employer has drawn up a vacation schedule, and especially if an employee has signed it, they cannot refuse a vacation (the requirement of section 150 of the Labour Code is met). If an employee still does not want to go on vacation voluntarily, the employer may issue an order sending them on vacation.

If an employee comes to work in breach of the employer's order, this is no basis for cancelling the order or paying wages. On the contrary, a refusal to carry out the employer's order is considered a breach of the company's internal rules, which may be subject to disciplinary action under section 90 of the Labour Code.

Also, the employer may include the obligation to take annual leave in the company's internal rules. Thus, an employee's refusal of annual leave without good cause against the employer's order may be considered

a breach of the company's internal rules, which may become a basis for termination under section 101(1)(1) of the Labour Code. However, the employer is required to seek a written explanation from the employee before such termination.

Other aspects

Annual leave is not only the employee's right but also the employer's obligation, so the employer may be held liable. Section 41(1) of the Administrative Offences Code provides that a breach of employment legislation (including failure to grant vacation) may result in the employer being warned or fined 70–1,100 euros.

To avoid vacation disputes and safeguard the employer's position, it is advisable to –

1. draw up a vacation schedule early, making allowance for the employees' wishes under section 150(2) of the Labour Code;
2. include the obligation to take annual leave in the company's internal rules; and
3. encourage employees to go on vacation by telling them about the harmful effects of not taking a vacation on both their own health and the company's overall productivity.

¹ Section 107 of the Constitution