

UNUSED ANNUAL LEAVE

Why It Is Important to Avoid It

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In this article, we discuss why it is essential for employers to ensure that employees use the full amount of their annual leave from the previous year no later than June 30.

Employer's Obligation

As explained in our previous article on organizing annual leave, the Labor Law defines the employer's obligation to ensure that employees exercise their right to annual leave in full.

The Law does not allow employees to forgo their annual leave, regardless of whether they applied for its use or not.

Of course, whenever business needs allow it, it is preferable to take into account employees' requests regarding the timing of annual leave, as this best fulfills the purpose of rest and recovery.

However, when employees show no initiative or willingness to schedule their annual leave, employers must ensure that the leave is used.

How Annual Leave Must Be Used

In regular circumstances, employees must use their annual leave as follows:

- The first part of the annual leave, lasting at least two consecutive working weeks, must be used within the current calendar year; and
- The remaining portion of the annual leave may, and must, be used no later than June 30 of the following year.

The employer has no legal right, even at the employee's request, to allow the use of annual leave from a given year after June 30 of the subsequent year.

Furthermore, the employer and the employee cannot agree to pay compensation instead of allowing the employee to use annual leave. Such an arrangement may potentially relieve the employer from liability for damages toward the employee, but **does not eliminate potential misdemeanor liability** for failure to ensure that annual leave is taken.

Consequences of Unused Annual Leave

If an employer fails to ensure that employees use all entitled days of annual leave within the statutory time limits, the employer may be exposed to:

- **Liability for damages** owed to employees for unused annual leave; and
- **Potential misdemeanor liability** for non-compliance with the provisions of the Labor Law.

On the other hand, although rare, there are situations in which an employer is objectively unable to enable employees to use their annual leave within the legally prescribed deadlines. In such circumstances, the employer would not bear liability for damages toward employees, nor would misdemeanor liability arise. Such situations include, for example:

- **Objective inability on the employee's side** to use annual leave from a given year by June 30 of the following year due to maternity leave, childcare leave, or special childcare leave, when such leave was continuous and prevented the employee from using the annual leave;
- **Objective inability on the employer's side, for reasons related to the employee**, to enable the employee to use annual leave within the statutory deadlines for the first or second portion of annual leave. These may include cases of long-term absences, such as unpaid leave, extended sick leave, and similar situations.

The fact that an employee did not apply for annual leave (i.e., employee passivity) does not constitute grounds for releasing the employer from responsibility regarding the existence of unused annual leave. This position is fully supported by current case law.

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