

## SUMMARY HOLIDAYS IN FRANCE

Under French law, all employees are granted a right to paid annual leave, which consists of a statutory minimum number of days subject to any more favourable provisions applicable under any collective bargaining agreement to which the employer (or the sector of business in which the employee is active) is party, the employer's internal practices or any individual employment contract concluded by the employer with the relevant employee.



## EMPLOYEE'S ENTITLEMENTS TO HOLIDAYS [Expressed in jours ouvrés]

The right to annual leave is appreciated over a reference period running from 1st June of the previous year to 31st May of the current year and generally calculated in working days. During this period, an employee accrues 2,08 working days' paid leave per month worked (equivalent to 5 weeks holidays per year).

As a consequence, an employee who has worked 12 months is entitled to a minimum of 25 days' (or five weeks) annual leave (this is prorated for employees having worked less than 12 months over the year). This entitlement is in addition to public holidays (around 11 days per year).

The acquisition of annual leave is automatic as soon as the employee begins working and will depend on the employee's actual working time. In this regard, certain periods during which the employment contract is suspended (such as maternity leave, absences due to occupational accident, etc.) are considered by law as effective working time.

The right to annual leave must be exercised every year and cannot therefore be carried forward to the following year except in certain specific circumstances (maternity leave, sick leave, etc.) or by agreement with the employer. Similarly, annual leave cannot be taken before they have been accrued through effective work but can be taken, after vesting in the employee, before the leave period provided the employer and employee both agree to this.

## PAYEMENT OF HOLIDAYS

Under the French Labour Code, holiday pay must be calculated according to the more favourable of the following two formulae :

- Holiday pay must be equal to a tenth of the total gross remuneration received by the employee within the "reference holiday year" (from 1 June one year to 31 May the following year)
- Employees on holidays must benefit from "the same" salary as if they had been working".
- Since this "holiday indemnity" aims at maintaining salary, French case law considers that employees on holiday must benefit from the elements of remuneration which are linked to their own personal activity and which are impacted by the holiday period.

For instance, items that the courts have decided must be included in the basic calculation of holiday pay include: target-based bonuses (Cass. soc., September, 22, 2011); employee's commissions, provided they are aimed at rewarding personal work (Cass. soc., June, 3, 2009), and also performance bonuses, even if they are only partially linked to the personal activity of the employee (Cass. soc., December, 7, 2011).

By contrast, items that are not taken into account include commissions which are calculated based on the results of an entire commercial department (Cass. soc., June, 22, 2011); commissions which are not impacted by the holiday period because they are due for the whole year (Cass. soc., April, 10, 2013); a "13th month" bonus payment (Cass. soc., June, 8, 2011); or any amount which is aimed at covering the employee's expenses, such as transport premiums (Cass. soc., December, 18, 2012).

Our legal department remains at your disposal to study the management of your staff. Do not hesitate to contact us.