

## **ANNUAL PAID LEAVE IN TURKISH LABOR LAW**

### **TÜRK İŞ HUKUKUNDA YILLIK ÜCRETLİ İZİN**

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#### **ABSTRACT**

According to the provisions of the Constitution titled working conditions and right to rest; rest is an acknowledged right of employees. The scope of the right and conditions of paid week and holidays as well as the paid annual leave are regulated by law (a.50/III-IV). The Labor Law regulates the provision as mandatory and states that the right to annual paid leave cannot be waived (Labor Law 53/II).

In order to be entitled to annual paid leave, the employee must have actually worked at least one year from the date of commencement of work at the workplace (Labor Law 53/I). This period includes the trial period as well. In the case of employment contracts where a year is not full yet, the annual leave cannot be used in proportion to the period worked. As a result of this provision, employees are required to use their annual paid leaves they are entitled only during the next working year (Labor Law 54/IV). In cases where the employee is employed in different workplaces of the same employer, the date on which the employee started working at the first workplace of the same employer is taken into account in the calculation of the time required to qualify for annual paid leave (Labor Law 54/I). This calculation is made in the same way even if there is time gap between the employee's employments. The provisions of the Labor Law related to the annual paid leave do not apply to workers who work in seasonal or campaign jobs for less than a year (Labor Law 53/III). However, this rule is a relative mandatory provision, and it is possible to apply annual leave to workers employed at seasonal and campaign jobs by changing the rule in the favor of the worker if parties agree mutually in the contract. In addition, if a worker who is employed in a workplace to perform seasonal works performs different jobs in the same workplace during the out-of-working season, it is a requirement to allow this worker to benefit from the right to annual paid leave. Employees with work contracts based on part-time or on-call work also benefit from annual paid leave equally as full-time employees and they cannot be treated differently (Annual Paid Leave Regulation a. 13/I). These workers use their annual paid leaves they are entitled by not working on days that fall within the next year's leave (Regulation a. 13/II).

The annual leave period to be granted to workers varies according to the period they worked in a workplace, their job and age. So much so that, annual leave less than fourteen days for those with a term of service from one year to five years (including five years), less than twenty days for those with a service term of more than five less than fifteen years (including fifteen years), less than twenty six days for those with a service term of fifteen years (included) and more cannot be given. The annual paid leave period of workers employed in underground worker is increased by four days (Labor Law 53/IV). However, the annual paid leave period granted for those workers who are eighteen years old or younger cannot be less than fifty, on the other hand for workers who are older cannot be less than twenty days (Labor Law 53/V). Annual leave periods can be increased with labor contracts and collective agreements (Labor Law 53/VI).

**Keywords:** Annual leave, right to rest, paid leave

#### **1. INTRODUCTION**

Labor law, which emerged with the development of industrialization, is the branch of law that protects the mutual rights of the employer and the worker as well as equilibrating the balance between rights. In the early years of industrialization, workers worked long hours, but in return they received a so-called misery wage. During those years, there were no arrangements for the workers to rest. In later years, with the development of labor law, studies were carried out to ensure that workers have a standard of living complying with human dignity. Some of the most significant ones of these studies are precautions taken for the occupational health and safety of the workers, regulation of working hours, compensation for the periods they worked, and assurance in providing time for their rest.

The right to rest is a right guaranteed by the Constitution in our legal system. With the right to rest, workers are granted the right to benefit from an annual paid leave without having their wages deducted. The purpose of the annual paid leave is to allow workers to rest and return to their previous performance levels. For this reason, not only the worker but also the employer has the interest in the annual paid leave right exercised.

## **2. ANNUAL PAID LEAVE IN GENERAL TERMS**

### **2.1. The Concept of Annual Paid Leave**

An annual paid leave, which can be used once a year and in the form of successive days, is a permit granted for the workers who have worked for one year to rest, and in doing so, to maintain their labor force and performance capacity (Çelik&Caniklioğlu& Canbolat,2018: 730; Akyiğit, 2005:304; Sümer, 2019: 163; Süzek, 2018:826; Güven&Aydın, 2004: 204; Eyrenci&Taşkent&Ulucan, 2004: 192). Arrangements for annual paid leave are made in accordance with the Annual Paid Leave Regulation dated March 3, 2004, which was issued based on Labor Law Article 53 and the rest, as well as Labor Law Article 60.

Being “annual” and a paid leave as well as “being granted to workers who are able to work” are the factors that distinguish annual paid leave from other leaves such as weekends, national observance days and general holidays. On the other hand, the fact that the regulations on annual paid leave are of a similar mandatory nature as the arrangements for other leaves is the affinity between this and other leaves (Süzek, 2018: 826).

### **2.2. Conditions for Requesting to Exercise Right of Annual Paid Leave**

#### **2.2.1. Presence of an Employer Subject to Labor Law**

Conditions required to benefit from the right to annual paid leave are set out in Labor Law Article 53. In Article 53 the duration of work and the nature of the business are mentioned, however, characteristics of the workplace are not disclosed. Although there is no clear provision on this subject, the provisions concerning annual paid leave do not seem to be applicable to the establishments covered by the exceptions set forth in Labor Law Article 4 (Alp, 2008:27; Kılıç, 2011: 180). Essentially, according to the Regulation on Annual Paid Leave, the workplace must be a business subject to the Labor Law as well (Article 2).

#### **2.2.2. Worker to be Working Subject to Labor Law**

The right to annual paid leave is a social right granted to workers working under the scope of Labor Law. Therefore, workers who fall outside the scope of the Labor Law – such as those working in maritime and air transport or home services – do not, as a rule, have the right to paid annual leave (Tunçomağ&Centel, 2008: 168-169; Güven&Aydın, 2004: 205).

#### **2.2.3. Appropriateness of the Nature of the Business for Annual Paid Leave**

One-year working period must be completed to qualify for the right to annual leave (Labor Law Article 53/I). In order for the worker to qualify for annual leave, the employment contract does not have to be of indefinite duration; even if the worker has worked with a fixed term contract, he/she is still entitled to an annual leave at the end of a one-year period. Workers with part-time or on-call employment contracts also benefit from the right to paid annual leave as full-time workers and cannot be treated differently. Workers working with such contracts will use the annual leave they were entitled for each year as not working on part-time workdays that fall into the next year’s leave period, as long as their employment contracts resume (Regulation Article 13).

Due to the nature of their business, provisions of Labor Law pertaining to annual paid leave cannot be applied to workers who work in seasonal or campaign jobs which last for less than a year (Labor Law Article 53/III). Since the provisions on annual paid leave are of a relatively mandatory nature, it is possible to arrange them in favor of the workers through a labor agreement or collective

bargaining agreement and have workers who work in seasonal and campaign jobs also to benefit from the annual paid leave as well. (Esener, 1978: 209; Kılıç, 2011: 182). Workers who work in permanent-term jobs in a workplace engaged in seasonal and campaign business may also benefit from the right to annual paid leave, like any other worker subject to the Labor Law, regardless of whether or not the contract includes such provisions (Eyrenci&Taşkent&Ulucan, 2004: 195-196; Kılıç, 2011: 182).

#### **2.2.4. Worker Had Been Working in a Permanent Job for at Least One Year**

In order to qualify for the right to an annual paid leave, a worker must have worked for at least one year, including the probationary period, from the day he/she started work at the workplace (Labor Law Article 53/II). The beginning of this one-year period is not the date of the employment contract, but the date on which the worker de facto begins to work (Mollamahmutoğlu, 2014: 1317). The employer is not obliged to grant annual paid leave to the workers who do not complete the period of one year in proportion to the time they worked (Eyrenci&Taşkent&Ulucan, 2004: 192; Sümer, 2019: 164; Süzek, 2018: 827). The worker is entitled to annual paid leave for each year of service, to be used in the following year. The one-year service period for the worker's future leave entitlements is calculated from the day of the previous leave entitlement to the following year of service (Labor Law Article 54/III).

In case of the business or a part of it to be transferred, workers' the right to paid annual leave is calculated as per Labor Law Article 6/2. According to this provision, the transferee employer is obliged to carry out the operations based on the worker's length of service according to the date when the worker started to work for the transferor employer. Since the annual paid leave is a right related to the service period of the worker, also in calculating how many days this entitlement is, the calculation is based on the date when the worker starts working with the transferor employer. In other words, the period in which the worker worked for the transferor employer is also taken into account in the calculation of annual paid leave (Sümer, 2019: 164-165; Süzek, 2018: 829. In parallel, Court of Cassation 9<sup>th</sup> Civil Chamber, 20.10.1994, 10367/14461; Eyrenci&Taşkent&Ulucan, 2004: 194).

In order for the worker to be entitled to annual paid leave, his/her work has to be continuous. However, considered hours worked as indicated in Labor Law Article 55 does not cause detriment to the continuity of the required one-year period. One-year work period required to obtain the right to annual paid leave does not have to be performed in the same workplace of the employer either; for the work performed at different workplaces belonging to the same employer, the worker shall be entitled to annual leave as well (Sümer, 2019: 164; Demircioğlu&Centel, 2009: 141; Günay, 2004: 614). In case when the worker working in a workplace under the purview of the Labor Law, after his/her departure he/she starts working in a workplace owned by his/her former employer which is not under the purview of the Labor Law, the period spent in the last workplace is included in the period of one year required for annual paid leave (Labor Law Article 54/I).

##### **2.2.4.1. Cases of Considered Hours Worked**

In the calculation of the one-year period required for the entitlement of the right to annual leave, not only the periods in which the worker de facto worked, but also the cases that the law recognizes as considered hours worked are taken into account. Cases of considered hours worked and the periods related to them are arranged in a limited number of provisions (Labor Law Article 55). Therefore, a case not mentioned in Labor Law Article 55, for example, the unpaid leave of absence granted for up to six months after giving birth to a female worker, is not recognized as a case of considered hours worked (Eyrenci& Taşkent&Ulucan, 2004:195; Kılıç, 2011:184; Sümer, 2019: 166). Cases of Considered Hours Worked are as follows:

**a) Days the worker has not been able to go to work due to an injury or illness suffered**

Days the worker has not been able to go to work due to an injury or illness suffered are considered as hours worked in calculating the annual leave. However, any time of the worker over six weeks to be added to the notification periods which will be calculated according to Labor Law Article 17, is not considered as hours worked. For example, a worker who has been working in the workplace for the past two weeks has a notice period of six weeks according to Labor Law Article 17. Any time exceeding six weeks to be added to the notification period in the event this worker suffered an injury, in other words any time exceeding twelve weeks, even if the worker is unable to return to work, the period exceeding twelve weeks is not taken into account in the calculation of the right to paid annual leave (Süzek, 2018: 831; Kılıç, 2011: 185).

**b) Periods in which female workers are not set to work before and after birth in accordance with Article 74**

It is essential that the pregnant worker is not set to work for a total of sixteen weeks, eight weeks before and eight weeks after birth. In case of multiple pregnancy, two weeks are added to the period before birth. These periods can be increased with a medical report if the health of the worker and the nature of the work thus require. In this case, the extended periods are also added to the one-year period required to qualify for annual paid leave (Çelik&Caniklioğlu&Canbolat, 2018: 734 fn. 268; Çöğenli, 1983: 103).

**c) Days the worker has not been able to go to work during the mobilization or any other legal assignments except active military service.**

According to this provision, days the worker has not been able to go to work during the mobilization or any other legal assignment while the employment contract is in progress shall be taken into account in the calculation of the one-year period required for the annual paid leave to be used. However, this does not take into account the total amount of time elapsed, but a maximum of ninety days.

**d) The days the worker has not been able to keep at his/her job due to the unremitting shutdown of the workplace for at least one week due to compelling reasons**

Fifteen days of the worker's time spent without working due to compelling reasons are considered as hours worked. For this, however, the worker must resume work when the compelling reason is removed.

**e) Periods mentioned in Labor Law Article 66**

The periods referred to in Labor Law Article 66 are those considered to be the daily working hours of the worker. According to the law, some of the time spent by the worker without performing the work undertaken by the labor contract is also included in the work period (Keskin, 2008: 75; Kılıç, 2011: 186). These are;

- 1) In mines, quarries or whatever kinds of work to be performed underground or under water, the time it takes for the workers to descend or enter or ascend from these places,
- 2) In case when the workers are assigned by the employer to work in a place other than the workplace, the time spent on the road,
- 3) Although the worker is at work and under the command of the employer at all the times, the period in which the worker is idle without work and waiting for the work to be released,
- 4) Periods spent when the worker performing his/her actual job, by the employer without performing his or her actual work, either by being sent by the employer to another location or by being occupied at the employer's home or office or any other place related to the employer,

- 5) Indicated periods to be allotted for lactating female workers to breastfeed their children,  
6) The length of time spent during taking the worker to and bringing them back collectively and regularly in all kinds of work, such as construction, protection or repair and modification of railways, highways and bridges, where workers must be taken and brought together at workplaces located at a distance away from the settlements.

f) Weekends, national observance days and general holidays

Such holidays are also considered to have worked in the calculation of the one-year period required for annual paid leave.

- g) According to the regulation issued based on the law no. 3153, half-day holidays required to be given in x-ray clinics, other than Sunday.  
h) Days workers have not been able to go to work for reasons such as participating in mediation meetings, being present at arbitration committees, working as workers' representatives in such committees, attending to assemblies, committees, commissions and meetings established in accordance with the relevant legislation on working life or to the conferences, congresses or boards of the international organizations related to labor, as workers' or trade unions' representatives.

i) Paid leaves in Labor Law Additional Clause 2

The worker is granted three days' paid leave when married or during adoption, or for the death of his/her mother, father, spouse, sibling, child, and five days' paid leave for a male worker whose wife has given birth (Labor Law Additional Clause 2). If workers have an at least 70 percent disabled child or a child with a chronic disease, paid leave for up to ten days in a year as a whole or in parts is permitted for the treatment of this disease, provided that it is used by only one of the working parents, based on the medical report validating the disease. These permits are included in the periods considered hours worked in calculating the one-year period required for annual paid leave.

j) Other leaves of absence and short working periods granted by the employer

k) Annual paid leave periods granted to the worker

According to Labor Law Article 55 / I-k, the annual paid leave granted by the employer to the worker is also taken into consideration in the calculation of the waiting period as hours worked. According to Labor Law Article 56/6, the free road permit to be given for up to four days is also counted from the periods worked under this paragraph. According to Labor Law Article 56/6, unpaid travel leaves to be granted for up to four days is also considered as hours worked within the scope of this paragraph (Sümer, 2019: 167; Mollamahmutoğlu, 2014: 1320).

Saturdays that are not worked partially or fully, even if not specifically stated in the law, are also considered as hours worked in terms of qualifying for annual paid leave. Because according to the Labor Law, Saturday is a working day (Mollamahmutoğlu, 2014: 1320). In contrast with, the time spent in strikes and lockouts is not considered as hours worked, nor the contrary can it be agreed with the labor agreement or collective bargaining agreement. (Sümer, 2019: 8).

## 2.3. Annual Paid Leave Periods

### 2.3.1. Leave Periods

Annual paid leave periods are determined by taking the length of service and age of the workers in a workplace. (Labor Law Article 53). The annual paid leave periods to be granted to workers cannot be less than fourteen days for those with a term of service from one year to five years (including five years), less than twenty days for those with a service term of more than five less than fifteen years (including fifteen years), less than twenty six days for those with a service term of fifteen

years (included). The annual paid leave period of workers employed in underground worker is increased by four days. The annual paid leave period granted for those workers who are eighteen years old or younger cannot be less than fifty, on the other hand for workers who are older cannot be less than twenty days. In determining the duration of leave, the seniority of the worker on the day on which he/she will start to use his/her leave is taken into consideration. Leave periods defined in the law are not absolutely mandatory but relatively mandatory in nature, therefore it is possible to increase those days with labor contracts or collective bargaining agreements (Sümer, 2019: 166; Mollamahmutoğlu, 2014:1326; Çelik&Caniklioğlu&Canbolat, 2018: 736; Günay, 2004: 617; Narmanlioğlu, 1998: 547; Kılıç, 2011: 189). The beginning of the length of service, which will be the basis for determining the duration of leave, will be the date on which the worker starts work at the workplace (Mollamahmutoğlu, 2014:1327; Narmanlioğlu, 1998: 548).

### **2.3.2. Inclusion of Days Not Considered to Be Within the Period of Annual Leave and Rejection of Annual Leave to Be Set Off with Other Leaves**

Leave durations regulated in accordance with Labor Law Article 53 are granted on working days (Sümer, 2019: 166; Mollamahmutoğlu, 2014: 1328; Çöğenli, 1983: 122; Kılıç, 2011: 189). In other words, the weekends, national observance days and general holidays which coincide with the annual paid leave days are not included in the leave period. The notification period (Labor Law Article 17/I-II) required by the employer in case of notification of termination of the employment contract cannot be intertwined with the annual leave period (Labor Law Article 59/II). In other words, when the employer wishes to terminate the employment contract with the worker in termination with notice terms while the worker is on annual leave, first the annual leave period will expire, then the notification periods will begin processing. In case when the employment contract is terminated with notice, it is not possible for the new job search leave to be granted obligatorily and the annual leave period to intertwine (Labor Law Article 59/II). It is adjudicated that paid, unpaid and other leaves granted by the employer and the sick leaves given with a medical report granted for resting in case of a sickness cannot be set off with the annual paid leave (Labor Law Article 56/IV). This provision is an absolutely mandatory regulation, even with the consent of the worker, to decide otherwise is forbidden (Mollamahmutoğlu, 2014: 1328; Kılıç, 2011: 190).

If in five days a week nine hours a day shifts are worked in a workplace and if Saturdays and Sundays are taken as off days, this is not a case which would purvey to include two days of week leave on annual leave. Because Saturday is considered as a working day according to the Labor Law, and distributing working hours to five days to have the Saturdays off with a workplace practice does not change the situation (Kılıç, 2011: 191; Süzek, 2018: 835). The Court of Cassation is of this opinion as well. However, since the provisions regarding the duration of the annual leave are relatively mandatory, it may be agreed mutually by the parties that a length of as much as the Saturdays within the leave period to extend duration of the annual paid leave, just like the weekend days Sundays (Mollamahmutoğlu, 2014: 1329).

### **2.3.3. Addition of Travel Leave to the Leave Period of Those Who Will Be Spending Their Annual Leave Elsewhere**

The employer is obliged to give up to four days of free leave to meet the periods of travel on their departure and return, provided that they request and document this issue, to those who will spend their annual paid leave at a destination other than where the workplace is established (Labor Law Article 56/VI).

In the provision; for the employer to be obliged grant a longer leave up to four additional days, burden of proof obligation was brought to the worker to prove that he/she will spend his/her annual paid leave elsewhere. The worker can fulfill this obligation by showing the hotel reservation, the rental agreement of the summer cottage he/she rented or the return ticket (Eyrenci&Taşkent&Ulucan, 2004: 198). The behavior of the worker who uses a road permit even if he does not spend his/her leave elsewhere is contrary to the loyalty debt, and gives the employer the

right to terminate the employment contract without notice in accordance with Labor Law Article 25/II (Güven&Aydın, 2004: 211).

The employer has to keep a leave of absence record showing the annual paid leave of the workers working in the workplace (Labor Law Article 56/VI).

### **2.3.4. Concurrence of a Strike and Lockout to the Annual Paid Leave Duration of the Worker**

Time spent during strikes and lockouts that coincide with the worker's annual paid leave period are not added to the leave period. In case of a strike at a workplace of a worker who has already initiated his/her annual paid leave whether to continue his/her leave or not is at his/her own discretion. The worker may continue his/her annual leave if he/she wishes, or cut his leave short and participate in the strike started at the workplace. However, if the worker decides to participate in the strike, he/she has to notify the employer about this fact (Mollamahmutoğlu, 2014: 1347; Kılıç, 2011: 192).

## **2.4. Annual Paid Leave Practice**

### **2.4.1. Obligation to Having the Annual Paid Leave Used**

The purpose of the annual paid leave is to rest the worker. From the rest of the worker as much as the worker him/herself the employer has an interest too; in fact, the society as a whole does. Therefore, even if the worker ratifies, it does not absolve the employer from the obligation to have the right to annual paid leave exercised (Sümer, 2019: 163; Narmanlıoğlu, 1998: 550; Eyrenci & Taşkent & Ulucan, 2004: 197). Worker to request collecting the corresponding remuneration instead of using the annual leave does not change this obligation. Use of the annual leave entitlement during the next term of service, is an absolutely mandatory provision; leaving it to be used at a later time or using it in combinations with the leaves of previous years is not possible (Mollamahmutoğlu, 2014: 1334; Kılıç, 2011: 194). However, if the worker has not been able to use his/her annual leave for reasons such as strike-lockout, obligation arising from any law, illness, or despite of his/her request if the employer has not allowed it to be used, he/she may use his/her annual paid leave in the following years (Mollamahmutoğlu, 2014: 1335). It is also not possible for the worker to ask for the remuneration corresponding to the unused leave during the term of service before the employment contract is terminated. Because this amount becomes due only after the termination of the employment contract (Akyiğit, 2000: 73; Kılıç, 2011: 194).

### **2.4.2. Determination of the Date of Use of Annual Paid Leave**

The worker uses his/her annual leave for each annual term of service during the annual term of service (Labor Law Article 54/IV). The postponement of annual paid leave to the following year and years and the combined use of the leave is not suitable for the rest of the worker who is the purpose of the annual leave (Eyrenci & Taşkent & Ulucan, 2004: 197; Güven & Aydın, 2004: 210; Tunçomağ & Centel, 2008: 172-173). The authority to determine when to use the annual leave, lies on to the employer. Therefore, the worker entitled to annual leave cannot immediately leave the job; he/she has to wait until the employer gives his/her consent (Sümer, 2019: 167).

The regulation on the use of annual paid leave has been made with the regulation issued based on Labor Law Article 60. According to this regulation, the principle where the worker is required to submit a petition to the employer at least one month before the date on which he/she wants to take his/her annual leave, the employer forwards the matter to the leave board if any, and then the request for the leave to be met according to the leave schedule, also taking into account the requests of the worker, however in accordance with the request of the employer, is adopted.

### **2.4.3. Indivisibility of the Annual Paid Leave**

The annual paid leave cannot be divided by the employer (Labor Law Article 56/I). Otherwise, it is not possible for the worker to rest and maintain his/her performance. Accordingly, the employer is

obliged to have each worker to exercise the annual leave period without interruption (Labor Law Article 56/II). However, upon the mutual agreement of the parties, it is possible to take the annual leave in sections, each section being no less than ten days (Labor Law Article 56/III).

### 3. CONCLUSION

Annual paid leave is a significant right guaranteed by the Constitution. It is extremely important that the constituents and conditions of exercise of this entitlement are included in our laws in accordance with international conventions. Labor Law regulates the annual paid leave in articles 53 and others and makes the necessary arrangements that comply with the necessities of time. However, it is also important to fulfill the legal, criminal and administrative sanctions that will ensure that the right to annual paid leave is exercised properly. Because, unfortunately, it is only understood after the cases have been submitted to the jurisdiction that there are many workers in our country who cannot use their annual paid leave as much as they should, and cannot get the salary corresponding to the period they are allowed to leave. With the inspections to be made by the State while the employment contract is in progress, we believe that the irregularities in exercising and having the worker exercise the right to annual paid leave will be minimized.

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