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Special leave – spare time with snags

Dear Sir or Madam,

This guest newsletter by Daniela Beck, lawyer at the Employers' Association Basel, demonstrates what extraordinary leisure time means not only for the employee but also for the employer, and to what extent this has been incorporated into law.

Starting point

In certain situations, an employee must be granted extraordinary leisure time, even during working hours. Swiss law mentions the "usual free hours and days" (Art 329, paragraph 3 Code of Obligations/CO), a term not necessarily self-explanatory. According to this provision, an employee has to be granted, within working hours, the necessary time to carry out urgent personal matters or for important family issues. Among such matters are, for example, keeping an appointment with a doctor, attending court hearings, appointments with authorities, or moving home. Important family events that entitle employees to extraordinary leisure time are weddings of close relatives, the birth of their own children and also the death of a close relative. In practice, the length of the leisure time granted due to a concrete event is often determined by regulations, collective employment agreements, or an employment contract.

For example, the following paid leave is granted in accordance with the collective employment agreement for the service sector in the Basel area, in particular for commercial staff:

<i>Particular event</i>	<i>Length</i>
Own wedding /Registration of partnership	2 days
Wedding or registration of partnership of close family members (parents, siblings, own children, grandchildren)	1 day
Civil partner giving birth	1 day
Caring for or organising care for sick children	Up to 3 days
Death of civil partner, children, parents or other close relatives having lived within the household of said employee, from day of death until funeral.	Up to 3 days
Death of other relatives or close friends; attending the funeral.	Up to 1 day
Military enlistment	Required time

Military inspection and discharge from compulsory military service	Up to 1 day
Moving own residence	1 day
Higher professional, publicly subsidised, or state-funded school exams	Up to 6 days

Salary payments during extraordinary leisure time

The law itself does not stipulate salary payments during extraordinary leisure. However, it has become common practice that employees generally will not have to face payroll deductions, with extraordinary leisure time counting as working hours. However, the question arises as to whether short term absences like doctor or dentist appointments cannot be arranged outside of working hours. There is no claim for extraordinary leisure time if the employee can reasonably be expected to either cancel the appointment in question or move it outside working hours. In companies with fixed working hours which make keeping an appointment extremely difficult, the time needed to keep the appointment generally counts as paid leave and need not be compensated for by additional work. In line with the employee's duty of loyalty, he or she should arrange appointments in such a way that they cause the least amount of disturbance to company and work process. As a consequence, flexible working hours can mean a disadvantage for an employee, as keeping such appointments could or even should be moved to spare time. In companies with moderate block times, the employer can refuse to grant extraordinary leisure time and require employees to move their short-term absences whenever possible into their spare time. The same also applies to part-time employees, who can be asked to fix such appointments outside their working hours whenever possible. However, the situation is different when it comes to acute health problems. On all accounts here, the obligation to continue the payment of salary is applied according to Art. 324a CO, i. e., the time during which an employee is unable to work in these instances counts as working time.

Care for sick children

An employer must grant an employee with family duties the required time to care for sick children (up to 15 years old), against production of a medical certificate, up to a maximum of three days (Art. 36, paragraph 3, Employment Act/EA). These absences of up to three days are per each case of illness. This provision takes into account that it is extremely difficult for single parents in employment to secure care for a sick child on short notice. However, the claim for the continuation of salary payment during absence is restricted to a maximum of three days per each individual illness, against the production of a medical certificate. The continuation of salary payment during this absence is not based on the article mentioned above but on Art. 324a CO that, among other things, stipulates a continuation of salary payment during an employee's absence due to a legal requirement. The care for a sick child by its parents is a legal requirement stipulated by family law (parental duty of care).

Time for job hunting

Once employees have been given notice, they are entitled to claim the required time in their search for new employment (Art. 329 paragraph 3, CO). This particularly applies to time necessary to attend job interviews. Customary is half a day off per week; however, when necessary this can be considerably increased if the notice period is exceptionally short, or if employees are faced with difficult circumstances in the job market, for example due to the nature of the job or due to their age. With regard to the spare time that is to be granted, it is immaterial who has given notice. Dates for job interviews must be coordinated with the employer, and the employee is only granted the amount of hours which is effectively required. There is some dispute as to whether the required time constitutes a paid absence. The legislator has not stipulated

an obligation to continue salary payment in this instance, however, if absences are within a reasonable limit, employees with a monthly salary generally do not face a wage deduction.

Public holidays

Public holidays are also considered as customary work-free days, based on Art. 329 paragraph 3 CO. Apart from 1 August, which is the only federal public holiday, the cantons are entitled to equate eight additional public holidays with Sundays (Art. 20a EA). As a consequence, it differs from canton to canton which public holidays are recognised by law. As a matter of principle it is illegal to work on these public holidays (this also applies to Sundays), and there is no compensation for lost working time. For employees with a monthly salary these are paid public holidays; employees with an hourly wage do not have, with the exception of 1 August, a legal claim for public holiday compensation. Should the public holiday fall on a holiday then there is no right for an additional claim. This also applies to part-time employees with fixed working hours. Some employers do add specific compensation (between two and three percent) to the salary of employees who have irregular working hours, which covers the public holidays in their entirety.

Cantonal public holidays are predominantly based on Christian traditions. To avoid discrimination against employees of different faiths, there is a legal entitlement to take days off other than on the public holidays recognised by the cantons, under the condition that the employer is notified not less than three days in advance (Art. 230a, paragraph 2 EA).

Conclusion

In a set of rules, The Employers' Association Basel recommends stipulating clear regulations regarding the duration of spare time granted due to particular events, in either an employment contract or in collective employment agreements. For employees with a monthly salary, extraordinary leisure time is generally considered to be paid absence. However, part-time employees and employees with flexible working hours may be asked to arrange their short-term absences during their spare time whenever possible. When it comes to care of sick children, employees with parental duties are entitled to three days off with pay, per child and per illness, to either care for children, or to organise such care. Additionally, public holidays as determined by the cantons are generally considered as paid days off for employees on a monthly salary.

About the author

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Kind regards

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