

Ethiopian Labour Law: Annual Leave

Description

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Annual leave is a minimum working condition that cannot be limited by work rules or collective agreement. The FDRE Constitution on Article 42(2) gave recognition to annual leave. Workers have the right to reasonable limitations of working hours, to rest, to leisure, **to periodic leave with pay**, to remuneration for public holidays as well as a healthy and safe work environment. Similarly, the governing labour proclamation at this time for private organization employees is Labour Proclamation No 1156/2019. Articles 76-80 of the Labour Proclamation cover annual leave. In this article what annual leave is all about, dividing and interruption of annual leave, carry over, and payment of wage in lieu of annual leave shall be discussed briefly.

Amount of Annual Leave and Related Rights

According to Labour Proclamation 1156/2019, the amount of annual leave for the first year of service shall be uninterrupted 16(Sixteen) working days. Then for every additional two years of service, one working day annual leave is added. Therefore, for the 1st year of service, 16 working days, for the 2nd year of service, 16 working days, for the 3rd year of service 17 working days, for the 4th year of service 17 working days, for the 5th year of service 18 working days, and it continues like this.

Annual leave is taken with a full salary. The wage a worker receives during his annual leave shall be equal to what he would have received if he had continued to work. What about allowance, bonus, commission or other incentives including service charges from customers? Article 53(2) of the Labour Proclamation provides lists of payments that are **excluded** from being considered as wages: a) Over-time pay b) Amount received by way of per-diems, hardship allowances, transport allowance,

relocation expenses, and similar allowance payable to the worker on the occasion of travel or change of his residence; c) Bonus d) Commission e) Other incentives paid for additional work results and f) Service charge received from customers. Thus the law seems to restrict the employee to receive only his wage/salary and not those listed items that are by law from the definition of wages.

Who is entitled to get annual leave: of a worker under probation or a worker that has completed his probation? For the purpose of annual leave, the labour law doesn't differentiate between a worker within probation period to a worker that completed his probation period (60 working days). In contrast to annual leave, sick leave is available only for a worker who has completed his probation period. Where a worker, after having completed his probation, is rendered incapable of working due to sickness other than employment injury, he shall be entitled to a sick leave. However, for annual leave, such a distinction has not been made. Thus there is no law that prohibits a worker who is in his probation period to request annual leave and be granted one. The law is silent as to enabling the employer to deduct annual leave balance from a worker that terminated his employment contract before expiry of the probation period or terminated by the employer while under probation.

The employer is granted the right to come up with a schedule of time in which employees can take annual leave. This right of the employer is based upon two conditions namely the interest of the employee and the need for maintaining the normal operation of the undertaking.



Dividing Annual Leave

Dividing annual leave is possible only in two parts. To apportion annual leave in to two parts, the agreement of the worker and the employer is required. This means annual leave cannot be taken each month for instance 2 days per month. It is the position of the labour law that annual leave be taken in bulk. Annual leave has to be taken consecutively for the full amount or if the worker and the employer agrees, the annual leave can be divided into two equal or unequal parts. Thus there is no flexibility of annual leave to be apportioned multiple times save only two parts.

Interruption of Annual Leave

When a worker on annual leave falls sick and requires medical treatment as an **inpatient**, his annual leave shall be suspended and his sick leave shall commence. The Labour Proclamation on Article 79(5) restricts sick leave as a reason for suspension of annual leave only to inpatients who happen to

be admitted to hospitals. An employee who could present a valid medical certificate attesting he/she needs rest by a duly recognized medical institution without being an inpatient, may not enjoy the suspension of the annual leave. On the other hand, the law is silent as to indicate public holidays falling on the annual leave resulting in suspension of the annual leave.

Carry Over

Annual leave may be postponed for two reasons. One is when the worker requests and the employer agrees. Second is when the employer has to postpone due to operational requirements of the business. However, the Labour Proclamation on Article 79(4) allows postponement for not more than two years. In other words, annual leave postponed for two years has to be taken and put into use in full and total before the third year commences. The understanding circulating with the public that the annual leave not taken above two years **expires**, is legally unwarranted. The law is clear in the manner that annual leave cannot be taken in wages but has to be taken as a leave, even if there is an agreement between an employee and employer. An agreement by a worker to waive in any manner his right to annual leave shall be null and void. Payment of wages in lieu of annual leave is allowed in restricted circumstances which we will see next. Annual leave not taken for two years is not included as exceptional circumstances that are allowed by law to be paid in wages in lieu of the leave.

Payment of Wages in Lieu of Annual Leave

In principle it is prohibited to pay wages in lieu of annual leave. The two exceptions recognized by the Labour Proclamation are termination of employment and recall of employees on leave. Where a contract of employment is terminated, then the employee has the right to receive pay for the annual leave not taken. The other scenario is when a worker who is on annual leave is recalled back to work. As per Article 80(2) the worker who is recalled from leave shall be entitled to a payment covering the remainder of his leave excluding the time lost for the trip. On recall of employees on leave, the law could have granted postponement of the leave to another time and be used as a leave rather than exchanging the leave for payment. The principle the law propounded has been that leave has to be taken and should not be substituted by payment. In non-conformity to this principle, the law allowed the employer to pay in cash the remainder of the annual leave of the worker who has been recalled while on annual leave.

In conclusion the main objective of annual leave is to give an employee the right to rest his body and mind from work and be back to work more rested and energetic. The employer has to respect this minimum working condition of the employee to enjoy leave with pay. That's why the labour law sets the amount of time annual leave has to take and the related rights of the employee on leave. The law attempts to strike the balance between the mandatory exercise of leave for the employee with the business needs of the undertaking. Thus the employer is given the right to frame a schedule for the employees to take annual leave and in dire circumstances where the undertaking is facing unforeseen hurdles, to recall an employee on leave.

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