



SOCIONEWS

NEW LEGAL PROVISIONS APPLICABLE TO 2 STATUTORY PUBLIC HOLIDAYS FALLING ON THE SAME DAY



LAW

Since 2019, every employee in Luxembourg has been entitled to 11 statutory public holidays per calendar year.

In 2024, two of these 11 days, namely Ascension Day and Europe Day, fall on 9 May, which necessitated legislative intervention to clarify the consequences for employees and their employers.

The new law of 8 February 2024¹ supplements the provisions of the Labour Code relating to public holidays to take account of the situation where two of the 11 statutory public

holidays fall on the same calendar day. The same provisions were inserted into the amended law of 16 April 1979 establishing the general status of civil servants.

The aim is to grant employees additional compensatory leave, to be taken within 3 months, for a second statutory public holiday falling on the same calendar day as a first statutory public holiday.

¹ Law of 8th February 2024, published in Memorial A n°66 of 23 February 2024:
<https://legilux.public.lu/eli/etat/leg/loi/2024/02/08/a66/jo>



1. COMPENSATORY LEAVE FOR PUBLIC HOLIDAYS

1.1 Statutory public holidays falling on a Sunday

Under the provisions of the Labour Code ², if a public holiday falls on a Sunday, employees are granted a day of compensatory leave.

This day off may be taken at the employee's convenience within 3 months.

If the employee fails to apply to the employer for this day off within the allotted time, the said day of compensatory leave is lost, unless the employer has introduced a more flexible system.

This day of compensatory leave must be taken in kind, which means that the employee cannot be paid for it, unless the contract is terminated before the compensatory leave can be taken.

The new law of 8 February 2024 extended this system to the second statutory public holiday that falls on the same day as a first statutory public holiday.

So if a public holiday falls on a Sunday, or if 2 such holidays fall on the same day, people are entitled to a day's compensatory leave, which must be granted within 3 months of the date of the holiday in question.

1.2 Public holidays falling on a working day not worked³

The notion of "*working day not worked*" covers those days of the week (excluding Sunday) on which people do not work under the terms of their individual employment contract.

If, for example, an employee works from Monday to Friday, then Saturday is the working day not worked.

If the employee has to work from Tuesday to Saturday, Monday will be a working day not worked.

If a public holiday falls on such a non-working day, employees are entitled to a day's compensatory leave, which must be taken within 3 months⁴.

The law also specifies that if service requirements are such that this is not possible, the day off may still be taken up to the end of the calendar year, with the exception of compensatory days off due for public holidays in November and December, which must be taken within the first 3 months of the following year.

It is therefore always up to the employee to make a request to his employer to take advantage of this day of compensatory leave.

If compensatory leave cannot be granted because of service requirements, the employee is entitled to the corresponding pay.

If 2 statutory public holidays fall on the same date, employees will be granted a second day of compensatory leave for the second statutory public holiday and will thus benefit from 2 days of compensatory leave which must be taken within a period of 3 months.

1.3 Public holidays falling on a working day⁵

If a public holiday falls on a day of the week on which the employee would normally have worked more than 4 hours (in accordance with his individual employment contract), that day is free for him, without an additional day's leave being taken into account. The employee is paid for this day in the amount of the hours that should have been worked.

If a second statutory public holiday coincides with this statutory (free) public holiday, the employees concerned must be granted compensatory leave for this second statutory public holiday, which must be taken within 3 months of the day in question⁶.

If a public holiday falls on a weekday on which the employee would have worked only 4 hours or less (in accordance with his individual employment contract), he is entitled, in addition to payment for the number of hours that would normally have been worked, to half a day's compensatory leave⁷.

If this day includes a second statutory public holiday, this generates an additional half-day's compensatory leave for employees working 4 hours or less under their employment contract.

² Article L. 232-3 (1) of the Labour Code

³ Article L. 232-6 (2) of the Labour Code

⁴ Article L. 232-6 (2) paragraph 2 (new) of the Labour Code

⁵ Article L. 232-6 (1) of the Labour Code

⁶ Article L. 232-6 (1) paragraph 2 (new) of the Labour Code

⁷ Article L. 232-6 (2) of the Labour Code

Employees who are expected to work 4 hours or less on a day on which 2 statutory public holidays fall are therefore free to do so and are also entitled to 2 half-days of compensatory leave to be taken within 3 months of the date of the statutory public holidays⁸.

If compensatory leave cannot be granted for service reasons, the employee is entitled to the remuneration corresponding to the duration of said leave.

If one or more public holidays fall during a period when the employee is off sick, can they be made up?

The answer is twofold.

If the public holiday falls on a day on which the employee would normally have worked (more than 4 hours under the terms of his employment contract), the public holiday is lost and the employee cannot recover it.

The second statutory public holiday falling on the same date is also lost.

If the employee had to work 4 hours or less on that day under their contract of employment, then they are entitled to half a day's compensatory rest.

For a second statutory public holiday falling on the same date, an employee who is ill and works 4 hours or less on the day in question is entitled to a second half-day's compensatory rest.

If the public holiday falls on a weekday on which the employee is not normally at work according to his employment contract, he is entitled to recover the holiday. An additional day's leave should therefore be taken into account.

If this date corresponds to 2 statutory public holidays, the sick employee is entitled to 2 days' compensatory leave.

The same answers apply to an employee on maternity leave.

2. HOLIDAY PAY

2.1 Remuneration to be paid to an employee who is free on a statutory public holiday

For each statutory public holiday falling on a working day, an employee who has the day off is entitled to remuneration corresponding to the number of hours he would normally have worked on that day.

2.2 Remuneration due to an employee who works on a public holiday

If an employee is required to work on a public holiday, his/her remuneration is determined as follows:

- if he is paid by the hour, he is entitled, for each hour worked on a public holiday, to his normal hourly pay, increased by 100%, in addition to his usual pay;

EXAMPLE:

Mr Y earns a gross hourly wage of €20 and normally works 6 hours on Mondays.

On Whit Monday, his employer has asked him to come to work for 4 hours.

His gross pay for the public holiday in question is as follows: $(6 \times €20) + (4 \times €40) = €280$.

- if he is paid on a monthly basis, he is entitled, for each hour worked on a public holiday, to his normal hourly pay, plus 100%, in addition to his normal monthly pay.

Normal hourly pay is determined by dividing monthly pay by 173.

EXAMPLE:

Mr X works 40 hours a week, i.e. 8 hours a day from Monday to Friday, and earns a gross monthly salary of €2,900.

On Monday 1 November, All Saints' Day, he had to work 6 hours. That month, he will be entitled to:

Hourly pay:

$€2,900 : 173 = €16.76$

Salary to be paid at the end of the month:

$€2,900 + (6 \times €33.52) = €3,101.12$

It should be noted that supplementary pay for hours worked on a public holiday is exempt from tax without any limitation.

Note that if a second public holiday falls on the same date, the employees concerned must be granted compensatory leave for this second public holiday (respectively half a day's compensatory leave, if the working time stipulated in the employment contract is 4 hours or less)⁹.

⁸ Article L. 232-6 (2) paragraph 5 (new) of the Labour Code

⁹ Article L. 232-7 (3bis) (new) of the Labour Code