

L.N. 271 of 2018**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)****Annual Leave National Standard Order, 2018**

IN EXERCISE of the powers conferred by articles 4 and 48 of the Employment and Industrial Relations Act, the Minister responsible for European Affairs and Equality has made the following order:

Title. **1.** (1) The title of this order is the Annual Leave National Standard Order, 2018.

Cap. 452. (2) For the purposes of this order, "the Act" means the Employment and Industrial Relations Act.

(3) The terms and expressions used in this order, unless the context otherwise requires, shall have the same meaning assigned to them in the Act.

Minimum requirements. S.L. 452.87. **2.** (1) This order lays down the minimum requirements related to the entitlement of annual leave in terms of the Organisation of Working Time Regulations.

(2) This order shall be applicable without prejudice to the introduction and implementation of provisions in collective agreements or in any other agreement entered into between employers and employees which are more favourable to employees.

Annual leave. **3.** (1) Leave with pay from the annual leave entitlement shall be availed of on days agreed upon between the employer and employee.

S.L.452.87. (2) As from the 1st of January 2019, unless otherwise agreed to in any applicable collective agreement, the employer may only utilize up to the equivalent in hours of twelve working days from the annual leave entitlement, to be calculated as provided for in the Organisation of Working Time Regulations, for the purposes of any type of shutdown, including a temporary closure of whole or part of the premises by the employer for bridge holidays or any other short periods of shutdown.

(3) Any type of shutdown, including a temporary closure of whole or part of the premises by the employer for bridge holidays, shall be communicated to all the employees by the end of January of each calendar year.

4. Once leave from the annual leave entitlement of the employee has been agreed to by the employer and the employee, such leave cannot be cancelled unilaterally but can only be cancelled if both the employer and the employee are in agreement.

Cancellation of leave.

5. (1) Annual leave shall continue to accrue in favour of an employee during the period when she is on maternity leave in terms of the Protection of Maternity (Employment) Regulations:

Accrual of leave during maternity leave.
S.L. 452.91.

Provided that notwithstanding anything to the contrary stated in any law, order or regulation, any balance of annual leave unavailed of by the end of the calendar year shall be automatically transferred to the next calendar year when it has not been possible for the employee to avail herself of such leave during the same year when the maternity leave commenced.

(2) Subject to article 6(b) of the National Holidays and other Public Holidays Act, when a public or national holiday falling on a day of work or on a weekly day of rest not being a Saturday or a Sunday falls within a period of maternity leave of any employee in respect of whom the Protection of Maternity (Employment) Regulations apply, such employee shall be entitled to the equivalent in hours of an additional day of annual leave to be calculated on the basis provided for in regulation 8 of the Organisation of Working Time Regulations.

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6. Annual leave shall continue to accrue in favour of an employee during the period when he is on sick leave or injury leave in terms of the Act, orders or regulations issued thereunder:

Accrual of leave during a period of sickness, injury.

Provided that notwithstanding anything to the contrary stated in any law, order or regulation, any balance of annual leave unavailed of by the end of the calendar year shall be automatically transferred to the next calendar year when it has not been possible for the employee to avail himself of such leave during the same year when the sickness or injury leave commenced.

7. The provisions laid down in articles 5 and 6 of this order shall apply:

Applicability of articles 5 and 6.

(a) irrespective of whether the annual leave entitlement is the minimum provided by law or is of a longer duration by virtue of a collective agreement or any other agreement entered into by the employer and the employee concerned;

(b) in case of article 5, irrespective of the duration of the maternity leave entitlement in terms of the Protection of Maternity (Employment) Regulations; and

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(c) in case of article 6 irrespective of whether the sick leave or the injury leave is fully paid, partially paid or unpaid.

Pre-arranged
leave.

8. Notwithstanding anything to the contrary stated in any law, order or regulation, any period of pre-arranged leave coinciding with a period of maternity, sickness or injury leave shall be considered as not having been availed of but shall be availed of after the return to work or shall be carried on to the subsequent year if such leave could not be availed of during the same year when the maternity, sickness or injury leave commenced.

Termination of
employment.

9. Where the employment relationship is terminated for whatever reason, all the balance of annual leave, including that annual leave which had accrued during a period of maternity leave, a period of sickness or during a period of injury but which had not been availed of, must be paid in accordance with the Organisation of Working Time Regulations.

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Penalties.

10. Any person who contravenes or fails to comply with the provisions of this order shall be guilty of an offence against the Act in terms of article 45 of the Act and shall be liable to a minimum fine (*multa*) of four hundred and sixty-five euro (€465). Moreover, in any proceedings instituted on the basis of an alleged breach of this order, besides the aforementioned penalty, the Court shall impose an obligation on the employer to grant any annual leave not availed of and accrued in any previous years in terms of this order. In the case of an employee who is no longer in the employment of the employer, the Court shall order the employer to pay a sum equal to the paid annual leave not availed of and accrued in any previous years in terms of this order.

Repeal.
S.L.452.64.

11. The Weekly Day of Rest and Annual Vacation Leave National Standard Order is hereby being repealed.