

The Annual Holidays Act



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1

Scope and obligatory nature of the Act

The Annual Holidays Act (162/2005) applies to all work carried out in the private and public sector as part of an *employment relationship or civil-service relationship*.

The Act applies to:

- employees in contractual employment relationships;
- public officials in central government;
- public officials in local government;
- officials of the Evangelical Lutheran Church and its parishes;
- public officials working for the Bank of Finland; and
- public officials working for the Finnish Parliament.

The Act does not apply to:

- seamen;
- work carried out as part of ordinary leisure-time activities;
- people performing work under labour administration employment measures;
- family carers and home carers; and
- teaching staff who are provided with equivalent annual holiday benefits as part of collective agreements.

The Act applies to both employment relationships and civil-service relationships. Thus, what is said of employees in this booklet also applies to public officials in central and local government. The Act's provisions on collective agreements correspondingly also apply to collective agreements for public officials in central and local government.

The provisions of the Annual Holidays Act are obligatory, unless the Act states otherwise. Any agreement reducing the benefits that an employee is entitled to under the Act is null and void unless there

are provisions in the Act permitting such agreements. However, agreements on granting employees better benefits than those provided in the Act (such as longer annual holidays or higher holiday pay) are permitted.

Employers' and employees' national associations have the right to conclude agreements that reduce employees' annual holiday benefits to the extent specifically permitted under the Act and within the limits of the Act.

2 Earning annual holiday

Under the Annual Holidays Act, employees can earn holiday in three different ways:

- according to the 14-day rule;
- according to the 35-hour rule; and
- according to the 'leave entitlement rule'.

Annual holiday is earned by working during the holiday credit year, whereas leave entitlement is based solely on the length of the employment relationship. The *holiday credit year* means the period from April 1 to March 31.

Length of annual holiday and the rules for earning it

Annual holiday entitlement is based on the number of holiday credit months earned during the previous holiday credit year. Depending on the length of the employment relationship, the employee is entitled to either 2 or 2.5 weekdays (see section 6 for definition of weekday) of holiday for each *full holiday credit month*. In the case of an employment relationship that, by the end of the holiday credit year, has lasted for

less than 12 months, the employee is entitled to 2 weekdays of holiday, and for an employment relationship that has lasted for more than 12 months, 2.5 weekdays of holiday, for each full holiday credit month. Under the Act, public officials in central government are entitled to 3 weekdays of holiday for each full holiday credit month after 15 years of service. When the number of days holiday is calculated, any fraction of a day is rounded up to constitute one full day of holiday.

In specific cases mentioned in the Act, the earning of holiday will continue uninterrupted even if the employee transfers to another employer. The employee cannot earn any annual holiday entitlement during military, voluntary military service or non-military service.

The earning of annual holiday will be in accordance with either the *14-day rule* or the *35-hour rule*, depending on the employee's agreed working hours. Both are based on the principle of full holiday credit months.

- The *14-day rule* applies to employees whose contract states that they work at least 14 days every month. The number of working days, not the number of working hours, is the determining factor. Working days of one hour and eight hours are of equal value here.
- The *35-hour rule* applies to employees who, in accordance with their contract, work a minimum of 35 hours *during at least one month* but do not come under the 14-day rule.

Full holiday credit month

A full holiday credit month is a calendar month during which

- an employee who comes under the 14-day rule has accumulated a total of at least 14 days at work (or the equivalent of days at work); or
- an employee who comes under the 35-hour rule has accumulated a total of at least 35 hours at work (or the equivalent of hours at work).

Days at work are considered to be days on which the employee is working at the workplace or, on the orders of the employer, elsewhere. Days at work include days on which the employee is travelling on the

orders of the employer that would otherwise be working days. If the employee is travelling during time off, this is not counted as a day at work or the equivalent of a day at work. The time spent by an employee in a health check ordered by the employer is also considered to be the equivalent of time at work for the purposes of earning annual holiday.

In addition to days at work, any period equivalent to time at work is also included in the calculation of a full holiday credit month. The provisions on periods equivalent to time at work apply equally to employees who come under the 14-day rule and under the 35-hour rule.

A period of absence from work for which the employer is by law obliged to pay the employee is considered to be a period equivalent to time at work. Under the conditions laid down in the Act, time off granted to adjust working hours is also considered to be a period *equivalent to time at work*.

Any working days and working hours when the employee has been unable to work for the reasons set out below are considered to be the equivalent of days at work:

- 1) special maternity leave, temporary child-care leave and absence for compelling family reasons, or a total of at most 156 days of maternity and parental leave and correspondingly 156 days of paternity and parental leave per one childbirth or adoption;
- 2) due to illness or accident, in which case the maximum is 75 working days in one holiday credit year; even if the incapacity continues uninterrupted after March 31, the maximum total for the illness or accident will be 75 working days;
- 3) due to medical rehabilitation, in which case the maximum is 75 working days in one holiday credit year; even if the rehabilitation continues uninterrupted after March 31, the maximum total for the rehabilitation period will be 75 working days;
- 4) due to an order issued by the authorities aimed at preventing a disease from spreading (quarantine);

5) due to study leave, in which case the maximum is 30 working days in one holiday credit year, and only if the employee has returned to work immediately after the study leave;

6) due to participation in training required for the job and with the consent of the employer, in which case the employer and the employee may agree that only 30 working days at a time can be equivalent to days at work;

7) due to lay-offs, in which case the maximum is 30 working days at a time;

8) due to shortened working weeks equivalent to lay-offs or other comparable working-hour arrangements, in which case the maximum is six months at a time; if such arrangements continue uninterrupted after March 31, a new six-month period is calculated from the start of April;

9) due to reservist military training or extra service, or supplementary service or extra service in accordance with the Non-Military Service Act; or

10) due to the carrying out of public duties of an elected official or appearance as a witness, which, by law, may not be refused or which may only be refused for special reasons laid down by law.

For employees who come under the 35-hour rule, any period of absence during which the employee would otherwise have been at work is considered to be a period equivalent to time at work. In the case of long absences from work, the particular calendar periods concerned in each holiday credit year are taken as the periods equivalent to time at work. A maternity, paternity or parental leave, whether or not it is an interrupted or uninterrupted period, may last a maximum of 182 calendar days, an illness, accident or rehabilitation period a maximum of 105 calendar days, and a lay-off or study leave period a maximum of 42 calendar days. The period of absence is considered to be the time between the first day of absence from work and the day on which the grounds for absence expired or the day preceding the return to work.

Leave equivalent to annual holiday

Employees not covered by the rules on earning annual holiday are entitled to take leave equivalent to annual holiday ('leave entitlement rule'). *Holiday compensation* is payable for the period of such leave.

The following employees are entitled to take leave equivalent to annual holiday *if they so desire*:

- employees whose contract states that they work for less than 14 days per month and also less than 35 hours every month;
- employees working at home;
- employer's family members, if they are the only employees working for the employer; and
- employees working for the same employer under repeated fixed-term employment contracts.

Employees who do not come under the 14-day rule (i.e. who do not, in accordance with their contract, have at least 14 working days every month) and who, in accordance with their contract, have less than 35 working hours *each month*, come under the 'leave entitlement rule'.

The earning of leave equivalent to annual holiday is not on the basis of working days or a period equivalent to them but on the basis of the length of the employment relationship. Employees are, in all cases, entitled to 2 weekdays of leave for each month during which they have been employed by the same employer during the holiday credit year. Thus, in employment relationships that have lasted for 12 months, the employee is entitled to four weeks of leave, for which he or she will be paid holiday compensation determined by his or her earnings.

Employees working at home, and an *employer's family members* in enterprises where there are no other employees are also entitled to take leave equivalent to holiday.

Employees who have worked for the same employer under *repeated fixed-term employment contracts* with, at most, only short interruptions are also covered by the 'leave entitlement rule'. In these cases, the

maximum amount of leave is either 2 or 2.5 weekdays for each holiday credit month, depending on the total duration of the employment relationship. In such cases, employees are entitled to take leave calculated on the basis of the period for which they have not taken any holiday already.

The Annual Holidays Act thus gives all employees not covered by the rules on earning annual holiday the right to take leave equivalent to annual holiday. The employee can make use of this right *if he or she so wishes*. The employee must give notification of his or her desire to make use of the right before the start of the holiday season. The granting of this leave is subject to the applicable provisions concerning the granting of annual holiday.

An employee not making use of his or her right to take leave is nevertheless entitled to receive holiday compensation. The holiday compensation must be paid by the end of the holiday season.

3 Holiday pay

According to *the general rule* on holiday pay, the employee has a right to receive at least his or her regular or average pay (including fringe benefits) for the period of his or her annual holiday. Fringe benefits that are not available to the employee during the holiday are paid as monetary compensation instead. The system of calculating the holiday pay depends on the way the employee is paid, as set below.

Holiday pay based on weekly or monthly pay

- Employees who come under the *14-day rule* receive their normal pay for the period of their annual holiday;
- Employees who come under the *35-hour rule* and whose contract states that they work at least 35 hours every month receive their normal pay for the period of their annual holiday;
- The holiday pay of employees who come under the *35-hour rule* and whose contract states that they work at least 35 hours *only in certain months* is calculated *on a percentage basis* in the same manner as the holiday pay of hourly-paid employees who come under the 35-hour rule.
- Holiday pay for employees, whose pay has been agreed upon on a monthly basis and whose working time has changed during the holiday credit year (from full-time to part-time or vice versa), shall be calculated on a percentage basis based on his or her earnings during the holiday credit year.

The holiday pay of a monthly-paid employee is on the basis of his or her earnings for regular working hours. Overtime and emergency overtime hours are not considered when holiday pay is calculated, unless the compensation paid for such work is part of the monthly pay. If, in addition to the monthly pay, the employee also receives other pay on a regular basis (such as the supplement paid for difficult working conditions, or regular commissions or productivity bonuses), this amount will be taken into account in calculating holiday pay on the basis of average daily pay.

If the holidays are held in shorter periods than the pay period, the holiday pay for part of the holiday based on weekly or monthly pay is calculated in accordance with the part-time provisions on the calculation of the pay. Thus, the holiday pay is calculated by multiplying the daily pay based on the number of working days in the calendar month with the number of working days included in the holiday period.

Holiday pay based on hourly or performance-related pay

- Employees who come under the *14-day rule* have their holiday pay calculated on the basis of their *average daily pay* and a multiplier determined by the number of days holiday.
- Employees who come under the *35-hour rule* have their holiday pay calculated *on a percentage basis* in accordance with their earnings during the holiday credit year, or whose working time has changed during the holiday credit year.

Holiday pay based on average daily pay

An employee's average daily pay is calculated by dividing the pay received or due for time worked during the holiday credit year by the number of days the employee was at work. Any sum payable for overtime or emergency work on top of the basic pay is not considered when the pay for time worked is calculated. Instead, one eighth of the hours worked in excess of the statutory regular daily working hours is added to the number of days at work used in the calculation. The resulting average daily pay is multiplied by the multiplier laid down in the Annual Holidays Act that corresponds to the number of days holiday.

If the regular hours of a full-time employee are divided up over four or six days a week instead of five, his or her average daily pay is multiplied by the number of weekly working days and divided by five. The average daily pay is thus proportioned to the five-day working week used as a basis for the annual holidays system, which ensures that employees doing a 'compressed' or 'stretched' working week are, in relative terms, in the same position as employees doing a five-day working week.

Percentage-based holiday pay

The percentage-based holiday pay system is applied to employees coming under the 35-hour rule who

- are paid on an *hourly or performance basis*; or
- are paid on a *monthly basis* and, in accordance with their contract, do not work 35 or more hours *every month*.

For these employees, holiday pay is calculated as a percentage of their earnings during the holiday credit year. If the employment relationship has lasted for at least 12 months by the end of the holiday credit year, the holiday pay is 11.5%, and if it has lasted for less than 12 months, 9% of the employee's earnings during the holiday credit year.

The holiday pay is calculated on the basis of the pay given for time worked during the holiday credit year. If, for reasons referred to below, the employee has been unable to work during the period in question, the calculated amount of unreceived pay for the period of absence is added to the pay used as a basis for calculating holiday pay.

Such absence can be on account of:

- maternity, special maternity, paternity or parental leave;
- temporary child-care leave;
- leave for compelling family reasons;
- illness or accident;
- rehabilitation;
- a quarantine order issued by the authorities; or
- lay-off.

The calculated addition to the pay used as a basis for calculating holiday pay is made for those days of absence equivalent to time at work (see p. 7) which would have been working days had there not been grounds for absence. The calculated pay for the period of absence from work is determined on the basis of the working hours in the employee's duty schedule or, if no duty schedule has been approved for the period of absence and unless otherwise agreed, on the basis of the employee's average weekly working hours and the pay at the start of the period of absence. If there has been no agreement on the average weekly working hours, the calculated pay is determined on the basis of the average weekly working hours during the 12 weeks preceding the absence.

Determining the holiday pay calculation method

Unless otherwise agreed in a collective agreement, the holiday pay calculation method is determined on the basis of the payment system applied to the employee at the end of the holiday credit year (March 31). The amount of holiday pay is then calculated on the basis of this method.

If the employee was receiving hourly pay on March 31 but started receiving monthly pay before the holiday or part thereof, the employer and the employee may *agree* to calculate the holiday pay on the basis of the monthly pay rule. The agreement must be in writing and appended to the annual holiday records.

If, for part of the holiday credit year the employee has been earning holiday (for 14 days or 35 hours per month) and for part of the year has come under the 'leave entitlement rule', the holiday pay is calculated separately for each period in accordance with the rules on holiday pay and holiday compensation.

Payment of holiday pay

Normally, holiday pay must be paid before the start of the holiday. However, in the case of a holiday not exceeding six days, the holiday pay may be paid on the employee's normal pay day. Collective agreements can be used to deviate from the legal provisions on payment of holiday pay.

Holiday bonus

The Annual Holidays Act contains no provisions on the payment of any holiday bonus in excess of holiday pay. Holiday bonus is a benefit paid in accordance with collective agreements and usually amounts to 50% of the holiday pay.

4 Holiday compensation

During his or her employment relationship, an employee earning annual holiday entitlement cannot exchange this for money (holiday compensation). Instead, an employee with holiday entitlement will receive holiday pay for the period of his or her holiday. However, employees not covered by the rules on earning annual holiday are entitled to take leave equivalent to annual holiday, for which they will receive pay in accordance with the rules on holiday compensation.

Holiday compensation is paid:

- for the period of leave entitlement to employees who come under the 'leave entitlement rule', namely
 - to employees with fewer hours than the minimum required under the rules on the earning of annual holiday;
 - to employees working at home;
 - to an employer's family members, if they are the only employees working for the enterprise;
- at the end of the employment relationship, for any holidays not taken; and
- if the employment relationship ends before the employee has earned any annual holiday entitlement.

Calculating holiday compensation

Holiday compensation for employees who come under the 'leave entitlement rule' during their employment relationships

For employment relationships that have lasted for at least 12 months, the holiday compensation is 11.5% of the pay given for the time worked during the holiday credit year. For employment relationships of less than 12 months, the holiday compensation is 9% of the pay given for the time worked.

If, during the holiday credit year, the employee has been on maternity, special maternity, paternity or parental leave, the pay used as a basis for calculating the sum payable for the period of leave is adjusted for these periods of absence. No other calculated pay items are added to the pay used as a basis for calculating holiday compensation.

Holiday compensation at the end of an employment relationship

The holiday compensation paid to the employee at the end of his or her employment relationship for any holiday not taken is calculated in accordance with the Act's provisions on holiday pay. If the employee has not earned any holiday by the time the employment relationship ends, he or she will receive the percentage-based holiday compensation calculated on the pay received for the time worked.

Agreement on transferring annual holiday benefits

When agreeing on a new fixed-term employment relationship, the employer and the employee may agree to transfer the employee's accrued annual holiday benefits (holiday and holiday pay) to the new employment relationship. In such cases, holiday compensation will not be payable at the end of the fixed-term employment relationship. The agreement on transferring benefits must be in writing and appended to the annual holiday records.

If, after conclusion of the agreement on transferring annual holiday benefits and after the end of the employment relationship, it becomes evident that there will not be any new employment relationship between the parties, the accrued annual holiday benefits must be paid on request.

Summary of the basis for calculating holiday pay and holiday compensation

Holiday earning rule	Payment system	
	Weekly or monthly pay	Hourly or performance-related pay
14-day rule	<ul style="list-style-type: none"> - holiday pay is normal monthly or weekly pay for the period of holiday - calculation basis includes regular supplements 	<ul style="list-style-type: none"> - calculated on the basis of average daily pay and a multiple
35-hour rule	<ul style="list-style-type: none"> - holiday pay is normal monthly or weekly pay for the period of holiday - calculation basis includes regular supplements - if only certain months are full holiday credit months, holiday pay is calculated in the same way as for hourly or performance-related pay 	<ul style="list-style-type: none"> - 9% or 11.5% of the pay during the holiday credit year - calculated pay for certain periods of absence (certain family leave, illness, rehabilitation, lay-offs) is added to the pay used as a basis for calculating holiday pay
<ul style="list-style-type: none"> - employees working less than 14 days or 35 hours every month - employees working at home - employer's family members, if they are the only employees working for the employer 	<ul style="list-style-type: none"> - holiday compensation is 9% or 11.5% of the pay for the time worked during the holiday credit year - calculated pay for maternity, paternity and parental leave is added to the pay used as a basis for calculating holiday pay 	<ul style="list-style-type: none"> - holiday compensation is 9% or 11.5% of the pay for the time worked during the holiday credit year - calculated pay for maternity, paternity and parental leave is added to the pay used as a basis for calculating holiday pay

5 Timing of annual holiday

An employee is given annual holiday at a time determined by the employer, unless the employer and the employee make an agreement on the timing of the holiday during the employment relationship in the manner laid down in the Act. During the employment relationship, the employer and the employee may also agree on how the holiday is divided up over the year within the limits laid down in the Act.

Annual holiday is earned in the form of *weekdays* and is also taken as weekdays. Weekdays are defined as days other than Sundays, church festivals, Independence Day, Christmas Eve, Midsummer Eve, Easter Saturday and the First of May. A full holiday week therefore consists of six days holiday (i.e. including Saturday) even if the employee works a five-day week.

Timing of annual holiday determined by the employer

The *summer holiday*, comprising 24 weekdays of the annual holiday, must be granted by the employer in such a way that it is taken during the *holiday season* (between May 2 and September 30). The rest of the holiday (*winter holiday*) must be given by the start of the following holiday season.

The summer holiday and the winter holiday must both be granted as uninterrupted periods, unless, for work continuity reasons, it is essential to divide the portion of the summer holiday exceeding 12 weekdays into one or more parts. In other words, annual holiday must always be given in such a way that it includes an uninterrupted period of at least 12 weekdays.

If granting the annual holiday during the holiday season results in substantial difficulties for the employer's operations in seasonal work, the summer holiday may be granted outside the holiday season during the same calendar year (either before or after the holiday season).

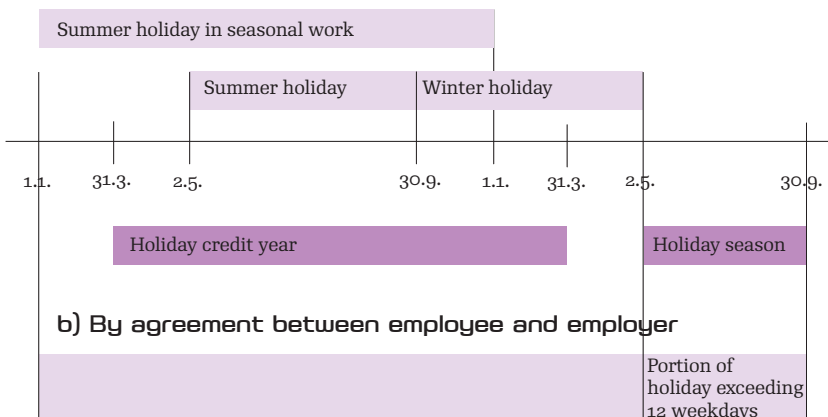
Agreeing on the division and timing of the employee's annual holiday during an employment relationship

The following matters can be agreed on separately between the employer and the employee:

- that the portion of the annual holiday exceeding 12 weekdays will be taken in one or more parts;
- that the holiday will be taken within a period that starts at the beginning of the calendar year in which the holiday season is situated and ends the following year before the start of the next holiday season (for example: the holiday earned between April 1, 2014 and March 31, 2015 may be taken between January 1, 2015 and April 30, 2016);
- that the portion of the annual holiday exceeding 12 weekdays will be taken within one year of the end of the holiday season (for example in conjunction with the following summer holiday);
- that the annual holiday earned up to the end of the employment relationship will be taken during the employment relationship; and
- *on the initiative of the employee*, that the portion of the annual holiday exceeding 24 weekdays will be converted into shortened working hours (for example as half-days). The agreement must be in writing.

Timing of annual holiday

a) Determined by the employer



- Holiday must be taken as an uninterrupted period of at least 12 weekdays

Procedures concerning the granting of annual holiday

Providing information about the general principles

The employer must explain to the employees and their representatives the general principles observed at the workplace in the timing, division and transfer of holidays. These principles may include:

- carrying over of annual holiday;
- how to agree on the taking of annual holidays at the workplace; and
- how staff holidays are to be taken, e.g. all at the same time or staggered over several months or rotation of holiday dates among the employees from one year to the next.

A convenient approach is to discuss the principles as part of the normal codetermination procedures or to have a meeting of all the staff groups affected.

Consulting the employees

Before determining the timing of the holiday, the employer must grant the employees an opportunity to express their views on the matter. The employer must, as far as possible, take the proposals of the employees into consideration and observe impartiality in the timing of the holidays.

The employer must consult each individual employee; as a rule, consulting only the employee representatives is not enough. The employer can meet this obligation by posting the times of annual holidays on, for example, the workplace notice board and by notifying staff members of their right to make proposals about the timing of the holidays. The employer must request and examine the proposals in good time so that it can consider them when determining the timing of the holidays.

Giving notification of the timing of annual holiday

The employer must give notification of the timing of the annual holiday no later than one month before it starts. If this is not possible, notification may also be given at a later date, but the notification must be given at least two weeks before the start of the holiday.

The employee must be notified of the timing of the holiday during the notification period referred to above. The notification can be a general notification to all employees or a notification to each individual staff member. If using the workplace notice board, the employer must ensure that employees absent from their workplace are also able to receive notification of the timing of their holidays in the manner laid down in the Act.

The notification of the timing of the annual holiday is binding on the employer. The employer does not have any unilateral right to cancel the holiday or any part of it, or to change the timing of the holiday on which notification has been given or any part of it, without the consent of the employee. An employer changing the timing of the holiday unilaterally must reimburse the employee for expenses incurred as a result of the cancellation of the holiday (for example, cancellation of tickets).

The employer and the employee may agree on the notification times observed in the notification of holidays. However, when concluding an employment contract, the employee may not give binding consent to shorter notification periods for future holidays.

Arranging annual holiday during an employee's time off

The employer may not, **without the consent of the employee,**

- determine that the annual holiday will start on an employee's day off if this would mean a reduction in the number of days holiday for the employee. However, the holiday may start on an employee's day off if this would not result in any reduction in the number of days holiday;
- grant a holiday of three weekdays or less if it would include a day on which the employee, under his or her duty schedule, has a day off; or
- determine that the annual holiday or any part of it should take place at the same time as the employee's maternity or paternity leave.

If annual holiday cannot be granted during the period laid down in the Act because the employee is on maternity or paternity leave, it may be granted within a period of six months following the end of the maternity or paternity leave. This provision only applies to maternity and paternity leave, which means that the employer can set the annual holiday in a period when the employee is on parental leave, for example.

It is not always possible to set the whole annual holiday in a work period. For example, if an employee on a part-time pension works for two weeks and is then off for two weeks, the holiday may also be set in the pension period. The annual holiday may also be set in the employee's period of notice.

Effects of incapacity for work

Incapacity for work at the start of or during the employee's annual holiday

If, at the start of his or her annual holiday or part of it, the employee is incapacitated because of childbirth, illness or accident, the holiday must, at the request of the employee, be postponed to a later date. The postponing can only be done if the employee has notified the employer of the incapacity and the grounds for it before the start of the holiday, or, if that is not possible, without delay.

The employee is also entitled to have his or her holiday or the part thereof postponed if it is known before the start that during the holiday he or she will receive medical or comparable treatment during which he or she will be incapacitated. A holiday or part thereof that is already determined or agreed may only be postponed if so requested by the employee. The request must be on the basis of the incapacity for work referred to above.

If an employee's incapacity for work due to childbirth, illness or accident begins during annual holiday or part of it, the employee has the right, at his or her request, to have the days when he or she has been incapacitated for work included in the annual holiday that exceed six holiday days postponed to a later date. The above mentioned waiting days must not decrease the employee's right to a four-week annual holiday.

An employee does not, however, have the right to have his or her holiday postponed when he or she has caused the incapacity intentionally or through gross negligence.

The request to postpone annual holiday must be made to the employer without delay, and the employee must, at the request of the employer, present a reliable account of his or her incapacity for work. A medical certificate delivered before the beginning of the employee's holiday shall be considered a request to postpone the start date of the employee's holiday to a later date.

The right to postpone one's annual holiday applies to statutory annual holidays. If an employee falls ill during e.g. holiday pay leave or compensatory free time, he or she is not entitled to postpone their holiday.

Timing of annual holiday postponed because of incapacity for work

Any *summer holiday* postponed because of incapacity for work must be taken at a later date during the same holiday season. If it is not possible to grant the summer holiday during the same holiday season (either because of work arrangements or because of the continuing illness of the employee), the holiday may be granted after the holiday season but before the end of the same calendar year.

Correspondingly, a *winter holiday* not taken may also be postponed to a later date. However, it must be granted before the start of the following holiday season, or if this is not possible, by the end of the following calendar year.

If, because of the employee's continuing incapacity for work, the granting of annual holiday is not possible during the periods referred to above, the holiday not granted must be replaced with holiday compensation. If in this case the employee is still entitled to pay during the period of his or her illness, he or she will be given both the pay for the period of the illness and compensation equivalent to the portion of the annual holiday not taken.

The employer should give notification of the timing of the postponed holiday no later than two weeks, or if this is not possible, one week before the start of the holiday.

Carrying over annual holiday

The employee

- has a right to carry over the portion of his or her holiday exceeding 24 weekdays (i.e. the winter holiday); the employer must give valid reasons for refusing the carrying over of holiday.

The employer and the employee may agree

- on carrying over the portion of the holiday exceeding 18 weekdays; and
- on taking the portion of the holiday exceeding 12 weekdays within a year of the end of the holiday season.

The carry-over system allows an employee to accumulate holiday to be taken at a later date in the form of longer uninterrupted periods.

The employee has a right to carry over the portion of his or her holiday exceeding 24 weekdays (i.e. the winter holiday), to be taken as carried-over holiday at a later date. This right is a general rule and the employer may not prevent an employee from carrying over winter holiday unless this would cause serious harm to the production and service operations at the workplace. In assessing the prospect of serious harm, consideration may be given to such matters as the nature of the work carried out by the employee, the arrangements necessitated by the work, and the nature and organization of the employer's operations.

The employer and the employee may also agree that the employee will take the portion of the holiday exceeding 18 weekdays during the following holiday season or thereafter as carried-over holiday. If this is agreed, it will be dealt with in the same way as the carried-over holiday referred to under the employee's right to carry over holiday.

Days of holiday may also be carried over on a shorter term basis. The employer and the employee may agree that the portion of a holiday exceeding 12 weekdays will be taken within a year of the end of the holiday season.

Granting carried-over holiday

The employer and the employee must discuss the carrying over of annual holiday and the number of days to be carried over no later than the time the employer consults employees on the timing of the annual holiday.

The carried-over holiday must be granted to the employee in the calendar year or years of his or her choosing. The employer and employee should also be able to agree on the precise timing of the carried-over holiday. There should be a plan at the workplace about the principles applied in the granting of carried-over holiday and its timing, as this will make it easier for the employer to prepare for long periods of absence of its staff members.

If no agreement can be reached on the precise timing of the carried-over holiday, the employee may take the carried-over holiday at the time of his or her choosing. In this case he or she must give notification of the taking of the carried-over holiday no later than four months before its start date.

Provisions on annual holidays also apply to carried-over holiday. The provisions on the postponing of annual holiday because of incapacity for work also apply to the postponing of carried-over holiday and the granting of postponed carried-over holiday.

Pay for the period of carried-over holiday

For the period of his or her carried-over holiday, the employee has the right to receive the same pay that he or she would be entitled to for annual holiday. If the employee's holiday pay is determined in accordance with the weekly or monthly pay rule, he or she also has a right to receive this pay for the period of carried-over holiday. If the employee's holiday pay is determined in accordance with the average daily pay rule or the percentage-based calculation, the holiday pay payable for the period of carried-over holiday is determined in accordance with the employee's earnings in the holiday credit year preceding the carried-over holiday or part thereof.

At the end of his or her employment relationship, the employee has a right to receive holiday compensation for any untaken carried-over holiday or part thereof. This is also the case if the employer changes the employment relationship of the employee from full-time to part-time or if the employee is laid off until further notice. Requesting such compensation is the decision of the employee. The amount of holiday compensation payable for the period of untaken carried-over holiday is calculated in accordance with the provisions applying to holiday compensation.

6 Deviating from the law by collective agreement

The national associations of employers, employees and public officials have a right to deviate from the law when agreeing on the following:

- holiday season;
- calculation and payment of holiday pay and holiday compensation;
- allowing the portion of annual holiday exceeding 12 weekdays to be taken in one or more parts;
- making winter holiday part of other arrangements concerning shortened working hours that they have agreed on;
- carried-over holiday;
- accrual of civil-service benefits in repeated fixed-term civil-service relationships that continue with only short interruptions; and
- periods equivalent to time at work, provided that the agreed arrangements ensure that employees have annual holidays that are at least equal in duration to those under the Annual Holidays Act. However, a period of absence from work resulting from the types of family leave referred to on page 7 may not be abridged from the period equivalent to time at work.

Furthermore, national collective agreements for public officials may include agreement on the following:

- periods of notice to be observed in the transfer or interruption of the annual holiday of a public official in central or local government; and
- the grounds for interrupting a holiday when the transfer or interruption is necessary for weighty reasons connected with the exercise of government authority or essential for carrying out the statutory health and safety-related tasks of a public body.

Applying the terms of collective agreements

The employer may also apply the provisions of the collective agreements referred to above in employment relationships of those employees who are not bound by collective agreements but in whose employment relationships the employer is required, under the Collective Agreements Act, to apply the provisions of such agreements.

If so agreed in an employment contract, the collective agreement provisions referred to above may be applied from the expiry of the collective agreement to the entry into force of a new collective agreement in those employment relationships in which it is permitted to apply the provisions of a valid collective agreement.

What is laid down on employer's national associations in the Annual Holidays Act correspondingly applies to:

- a Government negotiation authority or other Government authority responsible for collective agreements;
- the Commission for Local Authority Employers;
- the Church of Finland Negotiating Commission;
- the Orthodox Church of Finland;
- the Provincial Government of Åland; and
- the Municipal delegation for collective agreements of the Province of Åland.

The Bank of Finland, the Finnish Parliament's Chancellery Commission and the Social Insurance Institution of Finland, as well as the organizations representing their employees and public officials, are all competent parties to the collective agreements referred to above.

Provisions in a generally applicable collective agreement which deviate from those provided by law

An employer required under the Employment Contracts Act to adhere to a generally applicable collective agreement may also observe any provisions of a collective agreement made under the Annual Holidays Act that reduce an employee's statutory annual holiday benefits.

If, however, application of the annual holiday provisions of a generally applicable collective agreement requires agreement at local level, a non-organized employer adhering to a generally applicable collective agreement does not have a right to conclude a local agreement of this type required under a collective agreement. In these cases, a non-organized employer must apply the corresponding provisions in the law.

Annual holiday longer than that provided for by law

Unless otherwise laid down in an agreement, the provisions of the Annual Holidays Act on holiday pay and holiday compensation shall apply to any annual holiday which is longer than that provided for by law and based on a collective agreement. Unless otherwise agreed, the portion of the holiday exceeding the holiday provided for by law and based on a collective agreement shall be granted as laid down in the Annual Holidays Act on the granting of winter holiday.

Longer annual holiday for public officials in central government

The Annual Holidays Act contains provisions on the right of public officials working for central government and the Finnish Parliament to have longer annual holidays. If, before the start of the holiday season, a public official working for central government or the Finnish Parliament has a total of at least 15 years' service entitling him or her to annual holiday, he or she is granted 3 weekdays of normal

annual holiday for each full holiday credit month. The Act also contains provisions on the right of these public officials to have extensions on their winter holiday if a portion of their summer holiday is taken outside the holiday season. In practice, the annual holidays of public officials are determined according to the government's collective agreement.

7 Legal provisions designed to protect the employee's right to annual holiday

Holiday pay statement

When paying holiday pay or holiday compensation, the employer must give the employee a statement detailing the amount of holiday pay or holiday compensation and the basis on which it was determined.

If the employer gives the employee a pay certificate or pay statement in connection with each wage or salary payment which also details the amount of the holiday pay or holiday compensation and the basis on which it was determined, no separate holiday pay statement is needed. Failure to provide a holiday pay statement is punishable under penalty of a fine.

Keeping records of annual holidays

The employer must keep records (*annual holiday records*) of the following:

- the annual holidays of its employees;
- carried-over holidays; and
- holiday pay and holiday compensation determined on the basis of the Annual Holidays Act.

The annual holiday records must detail the following:

- the lengths of annual holidays
- the timing of annual holidays;
- the amount of holiday pay and holiday compensation; and
- the basis for determining holiday pay and holiday compensation.

The annual holiday records and the written agreements concluded between the employer and the employee under the Annual Holidays Act must be shown on request to the body carrying out occupational safety inspection, the employees' shop steward or the employees' elected representative. If no shop steward or elected representative has been elected, the records must be shown on request to the occupational safety delegate.

The employee or anybody authorized by him or her has a right, on request, to receive written details of the records of the employee's annual holidays and carried-over holiday. The annual holiday records must be kept at least until the end of the claim period laid down in the Annual Holidays Act.

Claim period

During the employment relationship, any legal action concerning a claim referred to in the Annual Holidays Act must be taken within two years of the end of the calendar year during which the annual holiday should have been granted or the holiday compensation paid. *After the end of the employment relationship*, any claim must be commenced within two years of the end of the relationship.

Availability and supervision

The employer must keep the Annual Holidays Act and the agreements concluded under it freely available to the employees at the workplace. The supervision of the Act is the responsibility of the occupational safety and health authorities (www.tyosuojelu.fi).

Penalties

An employer or an employer's representative who deliberately or through carelessness:

- neglects to grant an employee annual holiday or keeps an employee at work during the period it has determined as annual holiday;
- neglects to give, without delay, the holiday pay statement requested by the employee; or
- neglects its obligation concerning the availability of the Act and the agreements; shall be fined for an *annual holiday offence*.

The allocation of liability between the employer and its representatives shall be determined in accordance with the Penal Code. Under Chapter 47, section 7 of the Penal Code, persons who violate or neglect their obligations shall be punished. Due consideration is given to the position of the person concerned, the nature and extent of their duties and powers, and their role in creating and perpetuating the illegal situation.

Provisions on punishment for neglect or abuse concerning *annual holiday records* and for an annual holiday offence that has been committed despite a request, order or prohibition by occupational safety and health authorities are contained in Chapter 47, section 2 of the Penal Code (fine or a maximum of 6 months' imprisonment).

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