

Experience and Advantages of Developed Foreign Countries in the Legal Regulation of Leave



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ABSTRACT: This article examines the experience and legislation of developed countries in regulating the rights and interests of employees in the use of leave, analyzes the problematic aspects of the application of national legislation in this area and makes recommendations for their elimination.

KEYWORDS: leave, annual leave, extended basic leave, additional leave, right to annual leave, employment contract, work experience, international experience, and development strategy.

1. INTRODUCTION

Social policy includes the views and aspirations of the state in the social sphere. The social sphere covers education, science, health, employment, social protection. Labor policy is also implemented directly in the social sphere, and the state recognizes it as an integral part of its policy in terms of social stability, social development.

The Development Strategy of New Uzbekistan for 2022-2026, based on the principle "From the Strategy of Action - Towards a Development Strategy", consists of seven priorities, as noted above. One of these priorities is to pursue a fair social policy and develop human capital.

1.1. Submission

While the right to paid annual leave is fully recognized by all developed countries, it is worth noting that the legal basis for the exercise of this right in practice is different. Some countries do not have leave legislation at all (USA, UK) and this issue is regulated for most employees only through collective agreements, while other countries (Italy) have leave laws that apply to certain categories of employees, but holidays for part-time employees are set out in collective agreements, and finally in a number of countries (France, Germany) are regulated by special legislation for the main part of workers.

1.2. Manuscript requirements

In France, according to the ordinance of January 16, 1982, an employee is entitled to 2.5 days of uninterrupted work for one month, but the total duration does not exceed 30 working days. The period of leave for absence from work for unjustified reasons shall be granted in proportion to such days. Thus, as a rule, 5 weeks of paid leave are granted when working continuously in a calendar year. Students under the age of 21 and students in industrial education are entitled to 30 days of paid leave, but are entitled to paid leave in proportion to the number of months actually worked. The duration of leave under a collective bargaining agreement may be extended depending on the length of service or the age of the employee.

The ordinance (law) determines the procedure for granting leave, which is then further clarified through collective agreements. For non-agricultural sectors, the holiday period is set from May 1 to October 31. Leave may be granted to all employees at the same time, in which case the enterprise closes or ceases operations or is granted leave in accordance with the schedule. Couples working in the same enterprise are entitled to simultaneous leave. If an employee is granted leave outside of the vacation period, he is entitled to compensation by taking additional leave (1-2 days). Additional points are provided for working nights, weekends and holidays. If an employee did not go to work for 15 days during the year for any reason, he or she was deprived of all points earned.

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The employee was required to take additional leave the following year according to the points earned. The arithmetic rule was that an employee was entitled to this additional leave immediately after the age of 35, and after the age of 50 if he was between the ages of 35 and 50. Theoretically, continuous participation during one's employment entitles an employee to 16 months of additional paid leave before reaching retirement age.

The Law of the Federal Republic of Germany (GFR) of January 8, 1963 "On Holidays" enshrines the right of all workers and employees, as well as those in industrial training, to paid annual leave. According to the law, the minimum period of paid leave for full-time employees is 24 working days. An employment or collective agreement may specify another period of leave, but it shall not be less than 24 working days. The leave may be granted in full or in parts at the discretion of the employee. Transfer of leave to the next year is allowed only in exceptional cases and must be granted within the first three months of the year of transfer. Unused leave may be replaced by paid compensation upon termination of the employment contract. The period of illness confirmed by a medical certificate is not included in the period of leave. During the leave, the employee is not entitled to engage in other employment activities on a contract basis.

Under GFR law, dismissal of an employee during a holiday is prohibited. However, there are exceptions to this rule. According to the decision of the German Federal Court of Labor, the employer must, in exceptional cases, notify the employee when dismissing him during the leave. Notification in this manner is effective when the employee has an application to leave a message, even if he is on vacation.

Payment for leave is paid at the average wage resulting from 13 weeks prior to the start of the leave. The reduction in salary during this period without the fault of the employee does not affect the amount of vacation pay. According to the Law of the Federal Republic of Germany on the "Protection of Youth Labor" of 1976, annual paid leave is 30 working days for adolescents under 15 years of age, 27 working days for those under 16 years of age, and 25 working days for those under 18 years of age.

Holidays are regulated in the Republic of Turkey in accordance with the Labor Law №4857. According to him, conditions for weekly holidays, national holidays and public holidays will be created for workers. They will have the opportunity to rest and get paid these days. Weekly vacations are regulated by the 1924 Act on Weekly Vacations. According to him, one day a week is mandatory in workplaces in cities with a population of ten thousand and more.

Employees who have worked at the workplace for at least one year (including a probationary period) from the date of commencement of employment shall be granted annual paid leave. The right to annual paid leave cannot be waived.

Annual paid leave for employees, length of service:

- a) for employees from one to five years (including five years) from fourteen days;
- b) twenty days for employees over five years and less than fifteen years;
- c) not less than twenty-six days for employees of fifteen years or more.

However, the period of annual paid leave granted to workers aged 18 and under and workers aged 50 and over shall not be less than twenty days. Annual leave may also be extended by agreements and collective bargaining agreements (Article 53 of the Labor Code).

In some countries, the extension of leave is explained by various forms of its use. In Finland, for example, the fifth week of a labor holiday can only take place during the autumn-winter period (between September 30 and May 2). In Sweden, the fifth week of leave can be accrued for five years at the employee's discretion, meaning that every sixth year the employee has the opportunity to take a 10-week leave (5 weeks of regular leave and 5 weeks of accumulated leave).

The guarantee of the right of any employee to leave by the state is an important part of the social policy of this state. Therefore, the establishment of a minimum period of leave by law is aimed at ensuring a decent and complete rest for employees. The Anglo-Saxon family of law does not have a single rule that is the same for all states regarding the duration of annual basic leave established by law.

The Regulation on "Working Hours", adopted in the United Kingdom in 1998, strengthens the norm that the duration of leave is 3 weeks. However, Article 13 of this Regulation stipulates that from November 1999 the leave shall be extended to 4 weeks.

One of the main reasons for the extension of the annual main holiday in the UK, although it was gradual, was the adoption by the European Union in 1993 of the "Directive on Certain Aspects of the Organization of Working Hours". Article 7 of the Directive stipulates that "Member States shall take all necessary measures to ensure that every employee has the right to at least four weeks of annual paid leave". However, with the adoption of the Directive, the United Kingdom did not seek to incorporate its norms into its

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legislation, and the provisions of the Directive were initially reflected at the level of employment contracts and collective agreements.

In 1998, 4.3% of normal employees and 33.8% of part-time employees were not granted leave at all, despite the adoption of a special document defining the minimum period of annual basic leave, as well as its provision and conditions for employees. (4.8% and 37.7%) were entitled to leave of less than 1 week, while only 36% of enterprises provided full leave to their employees.

Since 2007, the UK has begun to take further steps to extend the annual basic holiday period. From October 1, 2007 the legislation provides for a 4.8-week leave of absence, from 2009 April 1, a 5.6-week leave. Thus, an employee who is engaged in a 5-day working week is entitled to a leave of absence of 28 working days (5.6 x 5).

The extension of the minimum annual leave period set for all employees in the UK has led to a similar increase in the minimum period of leave for certain categories of employees. However, to date, this has not been the case, although it has been agreed to revise the norms for extending the annual leave period for some areas of activity (civil aviation). The minimum period of leave (5 weeks) is also provided for agricultural workers, in which the average period of paid leave established by law is 20 working days.

The length of annual leave in the UK is set to be longer than in other European countries. At the same time, the "average" length of vacation is the same for the rest of the world - New Zealand and Australia.

Australia was the first Anglo-Saxon state to establish a 4-week holiday in 1974. This period of leave has been observed in Australian law for more than 30 years and is reflected in Article 32 of the National Labor Standards, which came into force on 1 January 2010, as well as in "Modern Guidelines". In the states and territorial units of Australia, the minimum period of annual basic working leave is fixed at 4 weeks for each working year. Thus, in Australia and New Zealand, the annual basic leave is 4 weeks, and an employee is entitled to 20 working days of leave when working in a 5-day working week.

In some Anglo-Saxon states, the duration of the annual basic holiday is relatively less than in other states. In Canada, federal and provincial law guarantees employees 2 weeks of basic annual leave, meaning that when an employee works a 5-day work week, the leave is only 10 working days. In the provinces of New Brunswick and Quebec, as a general rule, the annual basic holiday is 2 weeks. This thing comes from taking a day off for a working month. However, with the exception of Saskatchewan province, where an employee is entitled to 3 weeks of leave.

For Canada, which is economically developed and has a low unemployment rate, the 2-week basic leave prescribed by its legislation is relatively short. Some scientists estimate that the duration of such a holiday in Canada should be about 16 working days to 24 working days. However, Canadian law provides for the possibility of extending the annual leave based on length of service. This situation can be explained by the fact that the leave is set for a short period. Because it is only a minimum guarantee.

In the Anglo-Saxon states, it can be concluded that the minimum period of annual basic leave established by the legislation of these states is not the same and is set from 10 days to 28 working days (calculated in a 5-day working week). However, the period of leave established in these countries is in accordance with Article 3 of the ILO Convention on Paid Holidays, which states that the duration of leave recommended by the international community is 3 weeks. Recently, in some countries there is a tendency to extend the annual leave.

As a general rule, non-working holidays are not included in the number of working days if it is within the holiday period. In foreign countries, this rule applies only in the following cases, ie if the holiday falls on the day when the employee is supposed to work, it follows from the logic of foreign law, which provides for the procedure for granting annual leave on working days.

1.3. Important Information

The rule on exclusion of non-working holidays from working holidays is also provided for in Article 120 of the Labor Code. However, in most Anglo-Saxon states, the week is defined as the unit of calculation of the annual basic holiday. In practice, the duration of leave in these countries is calculated based on the number of working days provided for in the calendar period. A similar approach to determining the length of annual basic leave has been used in Russia for 70 years on working days. Only with the adoption of the Labor Code, the calculation of the annual basic holiday in the calendar order was introduced (Article 115, Part 1 of the CC RUz).

In our opinion, the calculation of leave by calendar days is convenient to use, allowing the use of a single rule in the calculation of leave, regardless of the working hours in force at the employer. In addition, the calculation of calendar days of leave is also beneficial for the employee himself, as the method of calculating vacations in the Anglo-Saxon countries provides for payment only for working days corresponding to the holiday period. When using the calendar mode, you will be charged for each day of the

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holiday. In addition, the calculation of calendar days of leave is also beneficial for the employee himself, as the method of calculating vacations in the Anglo-Saxon countries provides for payment only for working days corresponding to the holiday period. When using the calendar mode, you will be charged for each day of the holiday.

Based on the experience of developed countries studied above, it is proposed to make a number of changes and additions to the existing regulations governing the leave of our country. Including,

1. In order to introduce the calculation of the duration of annual leave in calendar days instead of working days, it is proposed to adopt Article 139 of the Labor Code of the Republic of Uzbekistan in the following new edition:

“Article 139. Calculation of annual leave

The duration of annual leave is calculated in calendar days and its maximum duration is not limited.

Non-working holidays corresponding to the holiday period are not taken into account in determining the duration of the holiday”.

2. It is necessary to expand the grounds for granting additional leave for certain categories of employees. In particular, it is advisable to provide employees working in shifts with additional leave in order to compensate for the fact that they worked in shifts on weekends and non-working holidays. At the same time, it is necessary to provide additional extended leave for this category of employees, rather than the main extended leave. Therefore, it is proposed to supplement the Labor Code of the Republic of Uzbekistan with a new article entitled **“Additional leave for shift work”**.

3. Employers for objective reasons can not pay leave within the period specified in the second part of Article 148 of the Labor Code of the Republic of Uzbekistan. In foreign countries, there are flexible rules for the payment of vacation pay, which stipulates that the payment of vacation pay is made before the start of the vacation, without linking the employee to a specific date, unless otherwise agreed by the parties. Therefore, it is proposed to adopt the second part of Article 148 of the Labor Code of the Republic of Uzbekistan in the following wording:

“Article 148. Payment for holidays

Payment for leave shall be made on the day of payment set by the employer, not later than the last working day before the start of the leave, unless otherwise agreed by the parties”.

4. In order to improve the procedure for granting annual leave, it is proposed to adopt the first part of Article 143 of the Labor Code of the Republic of Uzbekistan in the following wording:

“The right to take annual leave for the first year of employment arises after the employee has completed six months of continuous employment with that employer. According to the agreement of the parties to the employment contract, the employee may be granted leave of absence for less than six months”.

It is also proposed to adopt Article 143 of the Labor Code of the Republic of Uzbekistan in the following wording, which determines the procedure for granting leave in the event of reorganization of the organization:

“For newly established organizations, employees may be granted annual leave for the first working year before or after six months of work, provided that this leave is granted before the end of the first working year”.

The category of employees to whom employees are entitled to leave before the expiration of six months at their request should be expanded. For this purpose, the third part of Article 143 of the Labor Code of the Republic of Uzbekistan should be supplemented with the following items:

to persons raising one or more children under the age of fourteen (a child with a disability under the age of sixteen) (single parents, including widows, widows, divorced, wives of conscripts, surrogate parents);

To the participants of the war of 1941-1945 and persons equated to them in terms of privileges;

in collective agreements, as well as in other cases specified in the collective agreement or internal documents.

In addition, it is advisable to supplement this article with the fourth part of the following content:

“Employees who are entitled to six months of leave without work will be granted this leave for a full period and with full payment”.

2. ACKNOWLEDGEMENT

It is also proposed to adopt the Law of the Republic of Uzbekistan “On Holidays” based on the experience. This law includes the most

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important provisions related to the provision of leave, unpaid leave, social leave, and allows to regulate this relationship within the law.

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