



MEMENTO

OF THE EMPLOYER 04



TOPICS

The length of annual holidays in 2015 02



NEWS

Belgium and Luxembourg sign an accord on cross-border workers 18

Salary adjustments in April 2015 19



THE LENGTH OF ANNUAL HOLIDAYS IN 2015

In a few weeks, the summer holidays will be looming, a time as we move out of April to refocus on a few essential notions and, in particular, the rules that dictate how many paid holidays salaried workers get.

01

GENERAL PRINCIPLES

1 THE RIGHT TO HOLIDAY BASED ON WORK DONE

The right to annual holidays is conferred on all workers that, over the calendar year preceding that in which the holidays are taken (called the **"reference year"** or **holiday qualification period**, can prove that, in principle, they have had "work done" reported to the Belgian social security scheme for salaried workers, and notably the annual holidays sector or that, in some cases, qualified as unemployed. Hence, the right to holidays is granted to:

- white-collar and blue-collar workers, domestic help, accredited apprentices in the "small business sector", industrial apprentices, etc. who have been reported to the general social security system (NOSS – National Office for Social Security) during the reference year;
- young persons aged under 25 on 31 December of

the reference year who started work as a white-collar or blue-collar workers after completion of their studies or apprenticeship. Under certain conditions, this category of young persons can also qualify for additional holidays (see below);

- workers aged 50 or over on 31 December of the reference year who were fully unemployed or disabled during the period and, therefore, do not qualify to claim four full weeks of holiday; under certain conditions, this category can get "senior holidays" (see below);

- employment-promotion assistance (APE) workers in the Walloon Region as well as subsidised contractual officials (ACS);
- temporary or contract staff in the public sector (apart from teachers) employed during the reference year in local authorities (municipal councils, public institutions falling under councils, municipal associations or federations, conurbations or public institutions falling under them), provided the local authority has decided to place



- the temporary or contract official under the private sector's annual holidays scheme;
- temporary or contract staff of a cultural commission, the SNCB (Belgian Railways) and public transport run by public law corporations.

All other categories of people qualifying as public service staff cannot claim holiday based on work done in a public service during the reference year where they have switched from working for a private sector employer.

2 TAKING ACCOUNT OF CERTAIN ABSENCES (IN 2014)

The right to holidays and their length (see below) are dependent on how much work was done during the preceding calendar year (holiday qualification period). However, certain absences during the reference year (= 2014) are equated to actual work for determining the right to holidays and their duration. These deemed periods of work relate to precisely defined assumptions and only apply within certain limits. See the table below.

Periods of absence equated to normal actual work	
Grounds for suspending the employment contract	Length of period equated to actual work
Illness, accidents and prophylactic leave	
<ul style="list-style-type: none"> Accident at work or industrial disease Illness or accident (whose origin is not work-related) Prophylactic leave 	<ul style="list-style-type: none"> The total period of temporary disability The first 12 months of the period of partial disability if disability does not exceed 66% ⁽¹⁾ The first 12 months ⁽²⁾ Full period
Maternity, childbirth, paternity leave, adoption leave	
<ul style="list-style-type: none"> Maternity leave Period of confinement of the pregnant woman Period in which the worker stops work to breast-feed her child Breast-feeding breaks Paternity leave (maternity leave is converted into paternity leave if the mother dies or is admitted to hospital) Childbirth leave and adoption leave Foster care leave 	<ul style="list-style-type: none"> Period of 15 (17 or 19) weeks: the 6 (or 8) weeks before delivery of the baby and the 9 (or 11) weeks starting on the day of the birth Full period Period during which the claimant is entitled to maternity benefit but not beyond the 5th month following childbirth Period limited to 9 months from the birth of the baby Full period Full period laid down by statute A maximum of 6 days a year
Holidays and rest days in lieu	
<ul style="list-style-type: none"> Days of absence covered by pay taken into account to calculate annual holiday contributions (e.g., public holidays and days off in lieu of public holidays) Legal holidays and additional days Additional holidays (= European holidays) Holidays provided for under a collective bargaining agreement (CBA) made compulsory by royal decree (RD) Rest days in lieu in the construction industry Rest days in lieu for reduction of working time 	<ul style="list-style-type: none"> Full period Full period Full period Full period Full period Full period





Periods of absence equated to normal actual work	
Grounds for suspending the employment contract	Length of period equated to actual work
Periods subject to anti-crisis measures	
<ul style="list-style-type: none"> Period of temporary adaptation of the crisis working time (=collective reduction in working time) Period of individual reduction in work (crisis time credit) Period of total or partial suspension of contract performance (= crisis redundancy for white collar workers) 	<ul style="list-style-type: none"> Full period Full period Full period
National or civilian service obligations	
<ul style="list-style-type: none"> Troop mobilisation (and equivalent situations) Call to arms Service required by conscientious objectors and service effected with the civilian guard 	<ul style="list-style-type: none"> The last 12 months of interruption ⁽³⁾ Full period The last 12 months of interruption
Civic duties or performance of official duties	
<ul style="list-style-type: none"> Performance of civic duties (e.g. member of a family council, court witness, juror, officiating at a polling station) Performance of a public office Performance of duties within a joint (industrial relations) committee, a labour court Performance of an office as a trade union delegate 	<ul style="list-style-type: none"> Full period Full period Full period Full period
Studies, traineeships	
<ul style="list-style-type: none"> Participation in study courses or days devoted to social advancement or blue-collar education or trade union training Paid education leave 	<ul style="list-style-type: none"> Full period Full period
Unemployment, strikes, lock-outs	
<ul style="list-style-type: none"> Temporary redundancy Temporary redundancy for white-collar workers Recognised strike Lock-out 	<ul style="list-style-type: none"> Full period ⁽⁴⁾ Full period Full period Full period

(1) **Note!** Only **full** days of disability are equated.

(2) A relapse occurring within 14 calendar days following a period of illness is deemed a continuation of that illness. **Note!** Legally, only **full** days of disability are equated. However, the National Office for Annual Vacations (ONVA/RJV) has decided to convert the resumption of work as part of a medical part-time work schedule into full days and equate those to actual work done.

(3) National service obligations absolved in their country of origin by nationals of Member States of the European Union are equated to the extent of the last 12 months maximum.

(4) To calculate the amount of holiday pay for blue-collar workers, equating the time may be refused, however (RD of 10 November 2004, Official Gazette of 23.11.2004) were it is apparent that suspension of the employment contract:

- has been instituted without the notification or work-resumption obligations being adhered to;
- masks part-time work, a notice period or partial unemployment on other grounds;
- is the result of the company's seasonal working pattern;
- is the result of deficient organisation or poor management in the company; or
- is structural in nature; this is the case where, say, the lack of work is inherent in the nature of the company's or sector's activity or is liable to become permanent owing to the fact that it persists virtually uninterrupted for several years (see Brussels Labour Appeal Court, 21 January 2010, J.T.T., 2010, p. 138) or presents an imbalance relative to the work done by the same workers.



3. PERIODS NOT EQUATED TO ACTUAL WORK

The following are disregarded for the purpose of calculating holidays:

- days of absence for overriding family reasons;
- unjustified absences, plus unpaid authorised absences;
- periods of temporary unemployment owing to technical accidents or bad weather;
- periods of employment abroad not reported to the Belgian social security authorities;
- full career-interruption periods or periods of full contract suspension taken as time credit;
- full periods of suspension of contract performance taken as themed leave (leave taken for palliative care, parental leave, leave taken to assist or give care to a close relative);
- the period covered by severance paid to a white-collar worker.

02

TAKING HOLIDAY

1. GENERAL PRINCIPLES

Holidays have to be taken within the 12 months following the end of the reference year (= holiday qualification period). It should therefore be borne in mind that:

- it is forbidden to carry over to the next year statutory holidays that have not been taken or, conversely, to bring forward holiday from the next year;
- if the worker has not been able to take their holiday (e.g., owing to illness or having a baby), they forfeit the right to holiday not yet taken but not the right to holiday pay;
- workers may not renounce the holidays they are entitled to; failure by a worker to claim their holidays does not affect the employer's duty to grant them, whether the worker asks for them or not.

2. FIXING HOLIDAYS

The holidays legislation provides that annual holiday dates can be fixed:

- by the joint commission; in that case, the dates have to be set and notified to the Ministry for Social Affairs by 31 December of the year previous to that during which the holidays are to be taken;
- failing which, by the works council (within the statutory date limit);
- failing which, by collective agreement within the company (being an agreement between the employer and the union chapter, failing which, the workforce (no date limit laid down by law));

- failing which, by individual agreement between the employer and the worker.

For fixing holidays and unless a particular decision has been taken within a joint commission, the employer can either close the company down and arrange a communal holiday for the whole workforce or allow holidays based on individual agreements.

COLLECTIVE, ANNUAL COMPANY CLOSURE PERIOD

Where the employer wants to close down their business, they first have to consult with the staff or staff representatives (works council, trade union chapter), to agree the closure dates and any arrangements for using the balance of holidays not taken up during the closure period.

Where collective holiday dates are fixed by joint agreement by the employer and all of the workers or their representatives, the agreement has to be advertised by distributing copies to the workers and sending a copy to the Manpower Inspectorate.

We would point out that, if holidays are fixed for the whole workforce, workers can no longer opt to take holidays at another time.

If a worker has no right to all or some statutory holidays (or has already fully or partly used up their holiday entitlement at previous employer, they can, for the period of collective closure, claim unemployment benefit for the collective closure days not covered by holiday pay, providing always they qualify under the conditions for signing on (except for the traineeship condition).



To this end, the employer has to prepare and issue to the worker a temporary unemployment form called "C3.2 employeur" (= a certificate of temporary unemployment) plus a form "C3.2 A" (= verification card for temporary unemployment). For their part, the worker has to fill in a form "C3.2 travailleur". All these documents have to be handed in by the worker to their payment body (trade union or CAPAC (Auxiliary Fund for Payment of Unemployment Allowances)).

However, instead of handing over a "C3.2 employeur", the employer can issue an electronic declaration of temporary unemployment owing to company closure (www.securitesociale.be).

NOTE

The annual closure cannot be longer than the maximum length of the annual holidays, i.e. four weeks or 24 days (Saturdays included). Otherwise, the employer would be obliged to pay the regular wage for non-work days.

HOLIDAYS TAKEN ON THE BASIS OF INDIVIDUAL AGREEMENTS

If there is no joint committee or company agreement, holidays have to be fixed based on an individual agreement between the employer and each worker (RD of 30 March 1967, sec. 63, second paragraph).

If there is disagreement, the employer or worker can take the matter to the labour court, which settles the case under the urgent applications procedure (which is a summary procedure).

In all events, the following rules should be noted:

- 1) holidays have to be granted before 31 December of the holiday year, and cannot therefore be carried over to the next year. Workers cannot, for their part, renounce the holidays they are entitled to, nor can they demand that remaining holidays be carried over to the next year. White-collar

workers unable to take all or some holidays due to a situation utterly outside their control (e.g., illness arising at the end of the year for which holidays remain to be taken), the employer must, by 31 December, pay them the balance of their single and double holiday pay;

- 2) for family heads (and, more generally, workers with school-age children), holidays are preferably given during school holidays;
- 3) unless the workers in question ask otherwise, a continuous period of two weeks must be given between 1 May and 31 October (three weeks for workers aged under 18 on 31 December of the reference year); a continuous period of one week's holiday must be guaranteed in all events;
- 4) remaining holiday entitlement will be taken as far as possible during periods with a lower workload or at the time of regional, local or other festivities or to link a midweek public holiday to a weekend;
- 5) holidays may not be taken as half days, except:
 - where half days of holiday are made up by a half day's usual time off or a half day of additional holiday;
 - where half days of additional holiday are made up by a half day's usual time off or a half day of regular holiday;
 - where the worker asks for three days in the fourth week of holiday to be split into half days; however, the employer can refuse if that would disrupt the work organisation within the company.

IMPORTANT NOTE

The employer's agreement is essential for fixing holiday periods. Workers cannot therefore unilaterally demand certain holiday dates, although the employer's agreement can be deemed to be tacit, since the courts take the view that a worker is otherwise guilty of insubordination, which can be a ground for immediate dismissal if the employer's clearly expressed refusal to grant holiday on the dates unilaterally demanded is then disregarded.



03

THE LENGTH OF HOLIDAYS

As we pointed out above, the length of the holidays depends on the number of days or months of work (or of interruptions equated to normal actual work) during the reference year or holiday qualification period (= the calendar year preceding that during which the holidays have to be given). To calculate the length of the holidays, however, a difference is drawn depending on whether the staff are white-collar or blue-collar workers.

It will also be seen that exceptions are made to the general principle set out above, in three specific cases:

- “youth holidays” (for young workers aged under 25);
- “senior holidays” (for workers aged 50 or over);
- “additional holidays” (where work is started or resumed).

1 WHITE-COLLAR WORKERS

The length of holidays is fixed by law at two working days per full month of work (or equivalent) between 1 January and 31 December of

the reference year (2014 for holiday year 2015). A distinction is nonetheless drawn between full-time and part-time white-collar workers.

FULL-TIME EMPLOYMENT

“Full-time employment” is regular, usual employment for six or five days a week according to the maximum number of working hours fixed per day in the industry concerned, failing which by law (i.e. eight hours).

White-collar workers employed full time get two working days’ holiday per full month of work (or equivalent) between 1 January and 31 December of the reference year. This thus gives a number of holidays corresponding to a work schedule of six days a week. The maximum length of holiday under this schedule is therefore 24 days, or a maximum of four weeks’ holiday.

If the work is done over five days a week (which is the majority of cases) or less, the following conversion formula applies: X (i.e. the number of holidays under a six-day-a-week schedule) $\times 5/6$ (or $4/6$ if the full-time schedule is spread over four days a week), then rounding up to the higher full unit.

Number of months worked or equivalent in 2014	“Actual” holidays in 2015 if the work is spread over:	
	6 days a week	5 days a week
1	2	2
2	4	4
3	6	5
4	8	7
5	10	9
6	12	10
7	14	12
8	16	14
9	18	15
10	20	17
11	22	19
12	24	20



EXEMPLE

A white-collar worker works 8 months in 2014. In 2015, their work schedule is 5 days a week. The holiday entitlement in 2015 is: 8 months x 2 days = 16 holidays under a 6-days-a-week schedule, or 2 weeks and 4 days of holiday (6 + 6 + 4). If their work schedule is 5 days a week, the holiday entitlement is converted to: 16 days x 5/6 = 13.33 days, or 14 holidays (5 + 5 + 4).

Holidays are calculated the same way for all white-collar workers without distinction as to age or seniority.

Furthermore, the notion of a month of work as applying in the calculation counts as any full, paid, monthly period or equivalent that is reported to the NOSS by one or more employers.

➔ Workers hired or quitting their job during the year

Applying the law strictly, where the month in which the worker starts work or leaves their job is incomplete, white-collar workers can only claim two days' holiday for that month.

In practice, however, employers often give holidays in proportion to the work done.

EXEMPLE

One day's holiday if the worker is hired before the 15th of the month in question.

➔ Work that is not completed or is deficient

White-collar workers employed for several part months of work usually get holiday based on the sum of all the part months of employment to make them up to full months of work.

EXEMPLE

A white-collar worker is dismissed on 24 March 2014 with 3 months' severance. They secure fixed-term employment from 11 May to 30 June 2014. They are rehired on 24 July until 30 September 2014. Finally, they are hired on 13 November and are still working for the same employer in 2015. The periods of employment during the holiday qualification period (2014) therefore comprise:

- 01.01 to 24.03.2014: 2 months and 24 days;
- 11.05 to 30.06.2014: 1 month and 21 days;
- 24.07 to 30.09.2014: 2 months and 8 days;
- 13.11 to 31.12.2014: 1 month and 16 days;

Total: 6 months and 69 days;
or: 8 months and 9 days.

The 2015 holiday entitlement is therefore 16 days under a schedule of 6 days a week or 14 days under a schedule of 5 days a week (16 x 5/6). The 9 remaining days of employment are disregarded because they do not add up to a half month of work.

PART-TIME EMPLOYMENT

Part-time employment is employment organised over fewer than five days a week or over five or six days a week but where the daily working time is less than the normal work schedule applying to full-time workers.

Holidays of part-time workers or of those employed as such over the reference year are calculated in the same way as for full-time workers (see table above), though a variety of situations need to be looked at.

➔ The part-time schedule is the same in 2014 and 2015

Work over five or six days a week – If the work is spread over all the normal weekly working days (five or six days), the holiday entitlement is calculated the same way as for a full-time white-collar worker (i.e. two days per month's work during the reference year). Each holiday in fact corresponds to a day of part-time working, according to the schedule agreed by the parties.



Work over less than five days a week – If the work is spread over less than five days a week, the holiday entitlement is limited to the proportion of the number of working days agreed per week. In any event, each day’s holiday must coincide with the work days contractually agreed.

EXAMPLE

A worker does 5 months of work in 2014 under a schedule of 4 days a week (Monday to Thursday). They are therefore entitled to 10 holidays (2×5) under a work schedule of 6 days a week. Because they work 4 days a week, the holiday entitlement is prorated as follows: $(10 \times 4 \text{ usual days of work}) / 6 \text{ working days a week} = 6.66$, or 7 holidays (any fraction of a day entitles the worker to a day of holiday) These 7 holidays have to be allotted to the worker’s usual working days (from Monday to Thursday).

➔ **The work schedule changes in 2014 or 2015**

Where a white-collar worker **switches from “full time” to “part time”** (= a reduction in the working time), a distinction has to be drawn depending on whether the work at the time the holiday is taken is spread over all usual weekdays (five or six days) or over fewer than five days.

In the former case, the white-collar worker will get two days per month worked during the reference year, but each holiday has to correspond to a usual work day.

In the latter case, the days are limited to the proportion of work days agreed per week, whereby each holiday has to correspond to a usual work day.

EXAMPLE

A white-collar worker employed full time in 2014 switches to part time in 2015, working on Monday, Tuesday and Wednesday. The white-collar worker can claim $24 \text{ days (maximum)} \times 3/6 = 12 \text{ days}$. These 12 holidays have to coincide with a Monday, Tuesday or Wednesday.

Where a white-collar worker switches from “part time” to “full time” (= an increase in the working time), they can claim “paid” holiday in proportion to the part-time schedule they had during the reference year and any “unpaid” holiday they want (subject to the employer’s discretion) for the difference between the maximum of 24 days that is allowed and the paid holidays based on the part-time working. However,

during these “unpaid” holidays, the worker can decide to continue working (unless the company has an annual period of closure).

EXAMPLE

A white-collar worker is employed $\frac{1}{2}$ time from 01.01.2014 to 30.06.2014, $\frac{3}{4}$ time from 01.07.2014 to 31.12.2014, then full time. 6 months of work $\frac{1}{2}$ time gives an entitlement to $(6 \text{ months} \times 2 \text{ days}) \times \frac{1}{2} = 6 \text{ days}$. 6 months of work $\frac{3}{4}$ time gives an entitlement to $(6 \text{ months} \times 2 \text{ days}) \times \frac{3}{4} = 9 \text{ days}$. Total $6 + 9 = 15 \text{ days paid (6-day schedule)}$ or 13 days paid (5-day schedule). The white-collar worker can also, with their employer’s agreement, take 9 days unpaid, or: $24 \text{ days (max.)} - 15 \text{ days paid} = 9 \text{ days unpaid (6-day schedule)}$ or 7 days (5-day schedule).

➔ **Successive changes of schedule in 2014 and/or 2015**

Where the worker is employed under different successive schedules during both the reference year and the holiday year, the holiday entitlement is calculated according to the principles illustrated by the following examples.

EXAMPLE

In 2014 (holiday qualification period), a white-collar worker is employed full time, 38 hours over 5 days. In 2015 (holiday year), they are employed under this schedule till 31 March and take no holidays during that time. On 1 April 2015, they switch to 30 hours a week over 4 days. How many holidays can the white-collar claim in 2015:

- 1) on 1 January 2015?
- 2) after their work schedule changes on 1 April 2015?

Answer:

- 1) Fixing the holiday entitlement on 1 January: $12 \text{ months} \times 2 \text{ days} = (24 \text{ days} \times 5) / 6 = 20 \text{ holidays}$, or 4 weeks of holiday: $4 \times 38 \text{ hours} = 152 \text{ hours of holiday}^{(1)}$;
- 2) Fixing the holiday entitlement on 1 April: $(20 \text{ days} \times 4) / 5 = 16 \text{ holidays}$. Determining a holiday hours quota ⁽¹⁾: $(152 \text{ hours} \times 30) / 38 = 120 \text{ hours of holiday}$.

It is also possible to determine the number of holidays based on this number of hours: $120 \text{ hours} / 7.5 (2) = 16 \text{ days}$.

- (1) The number of holidays arrived at is converted into hours (but see note).
- (2) In this case, regardless of how the working schedule is split into hours of work per day, an average daily number of hours worked is calculated, i.e. $30 / 4 = 7.50 \text{ hours}$ (calculated in 100^{ths} and not minutes).

**NOTE**

The statute only mentions taking days of holiday; once a holiday hours quota has been determined, the number of hours always has to be converted into days.

➔ Totally variable part-time work schedule

Where a part-time worker's work schedule is totally variable (during both the reference year and the holiday year), the length of the holidays must, on an instruction issued by the Ministry for Social Affairs, be expressed in hours (letter from the studies department, 11 April 2005, ref. 15.527/MD/JV/18).

For this purpose, the total hours worked during the holiday qualification period is divided by the number of weeks during which the worker was employed. This gives the average work done per week, or X.

The number of hours of holiday, Y, is then:

$Y = X \times 4 \text{ weeks} \times (\text{number of weeks worked during the holiday qualification period} / 52)$

EXAMPLE

In 2014, a worker works 224 hours over 16 weeks. Weekly average work is therefore 14 hours (224/16). In 2015, the worker can therefore claim 17 hours of holiday ($14 \times 4 \times 16/52$).

2. RULES FOR BLUE-COLLAR WORKERS AND PERFORMING ARTISTS

For blue-collar workers (including janitors, domestic help and manual apprentices), and for salaried performing artists, holiday entitlement is set not by the employer but by the holidays fund they are members of, in line with an individual formula.

Since holiday year 2004, the statutory holiday entitlements of blue-collar workers have had to be calculated by going through the following two procedural phases.

FIRST STEP: DETERMINING THE ACTUAL OR EQUIVALENT NUMBER OF DAYS OF WORK DURING THE HOLIDAY QUALIFICATION PERIOD

For each situation of employment during the holiday qualification period, the actual and equivalent days worked are added together and converted into a standardised work schedule of five days a week, with the number arrived at being then multiplied by the worker's employment portion. This is done by applying the following formula:

$$A \times (5/R) \times (Q/S)$$

A = the total number of actual and equivalent days worked to be taken account of for the worker over the holiday qualification period for the envisaged employment situation;

R = the average number of days per week during which the worker is deemed to work based on their contract in the envisaged employment situation;

Q = the average number of hours per week during which the worker is deemed to work based on their contract in the envisaged employment situation;

S = the average number of hours per week during which a full-time worker is deemed to work.

This formula gives a number of days expressed as full-time days under a five-day week, to two decimal places.

If, during the same holiday qualification period, the worker was employed under various work schedules (e.g., under different employment situations), the above formula has to be applied separately for each employment situation.

The results from the various employment situations over one and the same holiday qualification period are then added together. Where the final sum has a decimal less than 0.5, it is disregarded. Decimals of 0.5 or higher are rounded up to the next unit.



SECOND STEP: DETERMINING THE NUMBER OF HOLIDAYS

Depending on the total number of days actually worked or equivalent in the holiday qualification period (see above), blue-collar workers can claim

(according to the table below) a fixed number of holidays, up to an absolute maximum of four weeks, or 20 days' holiday under a schedule of five days a week.

Total number of days actually worked normally and equivalent days in 2014	Number of statutory holidays in 2015 (expressed as days under the standard of a working schedule of 5 days a week full time)
231 and over	20
221 to 230	19
212 to 220	18
202 to 211	17
192 to 201	16
182 to 191	15
163 to 181	14
154 to 162	13
144 to 153	12
135 to 143	11
125 to 134	10
106 to 124	9
97 to 105	8
87 to 96	7
77 to 86	6
64 to 76	5
48 to 63	4
39 to 47	3
20 to 38	2
10 to 19	1
0 to 9	0

➔ In practice

No matter what schedule is worked by a blue-collar worker, the holiday funds send the employer a certificate setting out a number of holidays under a standardised schedule of five days a week full time.

It is up to the employer to adapt this number of holidays according to each blue-collar worker's work schedule at the time the holiday is taken.



EXEMPLE

A blue-collar worker is employed by 3 different employers during 2014, as follows:

- Employer A: 13 weeks under a full-time schedule of 38 hours a week over 6 days a week;
- Employer B: 30 weeks under a part-time schedule of 30 hours a week over 5 days a week. Full-time working in the company is 38 hours a week.
- Employer C: 9 weeks under a weekly schedule of 28 hours over 4 days a week. Full-time working in the company is 38 hours a week.

The number of holidays under a schedule of 5 days a week works out as follows:

- Employer A: $78 \text{ days } (13 \text{ weeks} \times 6)$; $R = 6 \text{ days}$; $Q = 38 \text{ hours}$; $S = 38 \text{ hours}$.
 $A \times S/R \times Q/S = 78 \times 5/6 \times 38/38 = 65 \text{ days}$.
- Employer B: $150 \text{ days } (30 \text{ weeks} \times 5)$; $R = 5 \text{ days}$; $Q = 30 \text{ hours}$; $S = 38 \text{ hours}$.
 $A \times S/R \times Q/S = 150 \times 5/5 \times 30/38 = 118.42 \text{ days}$.
- Employer C: $36 \text{ days } (9 \text{ weeks} \times 4)$; $R = 4 \text{ days}$; $Q = 28 \text{ hours}$; $S = 38 \text{ hours}$.
 $A \times S/R \times Q/S = 36 \times 5/4 \times 28/38 = 33.15 \text{ days}$.

The total number of days taken into consideration in 2014 under a schedule of 5 days a week is 216.57 (65 + 118.42 + 33.15), or 217 days. Employment over 217 days (under a schedule of 5 days a week) confers an entitlement to 18 holidays in 2015 under a standard schedule of 5 days a week full time.

NB

Each year, the National Office for Annual Vacations sends employers that are registered with the office a list with the names of the blue-collar workers they employ stating for each them the number of holidays they are entitled to. This document is sent in hard or soft copy form. However, employers can now retrieve the data for their workers online via the social security internet portal (www.securitesociale.be).

3. YOUNG PEOPLE AGED UNDER 25 (“YOUNG PERSONS’ HOLIDAYS”)

PRINCIPLES

Since 2001, young workers taking up work for the first time after leaving school or finishing an apprenticeship can claim under an additional holidays scheme called “**young persons’ holidays**”.

Young workers (aged under 25: see below) have an entitlement during the first calendar year following the end of their studies or apprenticeship to:

- holidays (and corresponding holiday pay) proportional to the number of months (or days) worked or equivalent during the calendar year they first take up employment (= the holiday qualification period or reference year); this is just a simple application of the principles applying to ordinary workers (see above);
- a certain number of **additional holidays** (= “**young persons’ holidays**”), which, aggregated with the holidays granted on the basis of actual work done or equivalent as referred to in the above item, will thus enable them to take a maximum total of four weeks’ holiday (or 24 days under a working schedule of six days a week).

Young workers are **free to take** all or just some of these additional holidays (or “young persons’ holidays”) (they have a right, but are under no obligation) and, for those days, they are paid supplementary holiday pay by the National Employment Office, which is also called “young persons’ holiday allowance”.

These additional holidays are also equated to ordinary holidays for the purposes of the various social security schemes (family allowance, illness/disability insurance, pension) and to determine their holiday entitlement in the following year.

CONDITIONS FOR CLAIMING

Young persons’ holidays can only be given if the following conditions are met:

- 1) the young person must be **aged under 25** on 31 December of the reference year (= holiday qualification period or the year during which they first start employed work);
- 2) during the holiday qualification period, they must have completed either a course of studies or an apprenticeship (“small businesses” training or an industrial apprenticeship), or their training (as recognised under the compulsory part-time schooling rules by FOREm, Actiris or the VDAB). Evidence of the termination of studies, the apprenticeship or the training is provided by the young worker by presenting an affidavit contained on form C103 “vacances jeunes”;



- 3) after completing their studies, apprenticeship or training, they must **have worked** during the holiday qualification period as a salaried worker under one or more employment contracts for **at least one month**; this minimum one month's employment during the holiday qualification period must comprise at least 13 days of actual or equated work.

 **EXEMPLE**

A young person aged 23 completes their studies on 30 June 2014 and starts work with an employer on 2 November 2014. In 2015 they can claim:

- 4 days of holiday based on actual work done (2 days per month worked in 2014, or 4 days out of the 24 a worker evidencing they were employed throughout 2014 could claim);
- 20 additional holidays, given they worked for more than one month during the holiday qualification period and are aged under 25 on 31 December 2014; however, the young person is free to take all or some of these additional holidays, which will give an entitlement to a "young persons' holiday allowance".

 **NB**

Work done under a student employment contract (e.g., during the summer vacation) and on which no regular social security contributions were calculated (apart from the solidarity contribution) is not equated to actual work done and is therefore left out of consideration.

WHEN AND HOW ADDITIONAL DAYS CAN BE TAKEN

Additional holidays can only be taken during salaried employment and once the ordinary holidays have been used up. The period at which they are taken is fixed according to the normal rules.

They can be taken in one lot or split into several lots of full or half days.

4 WORKERS AGED 50 OR OVER ("SENIOR HOLIDAYS")

PRINCIPLE

Along the lines of the "young persons' holidays", a full holiday entitlement (= 4 weeks) is granted to **persons aged at least 50** who resume work after a period of full unemployment or disability and, under the regular provisions, have no right to holidays or

can only claim incomplete holidays. This is called the **"senior holidays"** scheme.

In other words, during the first calendar year (holiday year) following that during which they were in full unemployment or disabled (= holiday qualification period), older workers are entitled to:

- a number of holidays (and corresponding holiday pay) proportional to the number of months (or days) worked or equivalent during the holiday qualification period; this is a simple application of the ordinary principles;
- a certain number of **additional holidays (= "senior holidays")**, which, aggregated with any holidays granted on the basis of the actual or equivalent work referred to above, enable them to take a maximum total of four weeks' holiday (or 24 days under a schedule of six days a week).

Older workers are free to take all or part of their senior holiday entitlement, since they have a right but not an obligation. For "senior holidays" that they take, workers receive additional holiday pay, which is paid by the National Office for Employment, called senior holidays allowance.

 **NB**

Senior holidays are equated to ordinary holiday for the purposes of the other branches of social security and to "days worked" when calculating annual holidays in the next year.

CONDITIONS FOR CLAIMING

Claimants of senior holidays have to meet the following conditions:

- 1) workers must be under an employment contract and fall within the ambit of the annual holidays legislation;
- 2) workers must be aged 50 or over on 31 December of the reference year (= holiday qualification period or calendar year preceding that in which the holidays are taken); to claim senior holidays in 2015, workers therefore have to be aged 50 or more on 31 December 2014;
- 3) workers must have been fully unemployed or disabled (= as from the 13th month of work disability) during the reference year and thereby have not been entitled to four weeks of paid holiday. Senior holidays therefore cannot be



granted to workers who were not entitled to take their full holidays owing to a period of partial unemployment, career interruption, time credit, etc., given that, in these various situations, they do not qualify as fully unemployed!

 **EXEMPLE**

Someone aged 54 is fully unemployed up until 30 September 2014. They are employed under a full-time white-collar contract of employment on 1 October 2014. Having been unemployed for the first 9 months of 2014, the worker cannot claim full holidays in 2015. However, they do meet all the conditions to get senior holidays. Thus, in 2015 they can claim:

- 6 holidays based on their actual work done (2 days per month worked in 2014, or 6 days out if the 24 they could have claimed as workers able to prove employment throughout 2014);
- 18 senior holidays (or a maximum of 24 days corresponding to 4 weeks' holiday less the 6 days allowed for actual work done or equivalent in 2014).

HOW AND WHEN SENIOR HOLIDAYS CAN BE TAKEN

Senior holidays can only be taken during salaried employment and once any ordinary days of holiday have been used up.

The time they are taken is fixed according to the regular provisions for taking annual holiday (see above).

These days can be taken in one or several lots, per complete or half day.

In all events, workers are free to take all or only some of these additional days.

5 SUPPLEMENTARY HOLIDAYS

Since 1 April 2012, it has been possible for workers starting or resuming work to actually take holidays during the same calendar year as that in which work is started or resumed.

CONDITIONS FOR CLAIMING

To claim "supplementary holidays" or "European holidays" during the year in which work is started or resumed, workers (white-collar or blue-collar) must meet all of the following conditions:

- they must start or resume work in the employ of one or more employers;

- they must have done a start-up period of three months;
- they must have used up any "ordinary holidays" they were entitled to.

➔ Starting or resuming work

Supplementary holiday entitlement is accorded to workers starting or resuming work.

"Starting work" means the situation of salaried workers employed for the first time by one or more employers under the general schedule for salaried workers up until such time as those worker can claim four weeks' holiday, in proportion to their own work schedule at the time their leave days are taken.

We would nonetheless point out that a start of work **extends only to the end of the year following that in which the start takes place.**

Covered, therefore, are workers who:

- start their occupational career as a salaried worker;
- carry out work as a salaried worker after a period of working abroad;
- switch from self-employment to salaried employment;
- switch from the public sector to the private sector;
- switch a "traineeship" status to that of a salaried worker (e.g., switching from a "PFI" or "IBO" to working under a contract as a salaried worker)."

 **EXEMPLE**

Someone starts as a salaried worker on 1 July 2014.

In 2014 (the year in which work starts), they can claim supplementary holidays based on their work done between 01.07.2014 and 31.12.2014.

In 2015 (the year following that in which work started), they can claim "ordinary" holidays based on their work done in 2014, but to these can be added "supplementary holidays" up to a maximum of four week's holiday in total.

"Resumption of work" means work by a worker who previously:

- was fully unemployed;
- was long-term work-disabled (meaning days of disability not equated days of actual work, i.e. days after the first 12 months' disability);



- was called to do military service;
- qualified for full suspension of work under time credit or themed leave (i.e. parental leave, leave to assist someone under palliative care or leave to assist or care for a member of the claimant's household or family suffering from a serious illness);
- was under a period of part-time parental leave;
- was on unpaid leave.

Workers resuming work also include:

- **part-time workers resuming full-time work** during the holiday year.
- part-time workers who, during the holiday year, **increase their working schedule by 20% or more** of a full-time schedule compared to the work schedule(s) they worked under during the holiday qualification period.

! NB

This provision only applies to workers with a deficit of four days or more of holiday so as to qualify for four weeks' holiday.

➔ **Effecting a "start-up" period of three months**

Supplementary holiday entitlement is accorded on condition the worker has done a period of actual work (or qualified for a period of work interruption equated to actual work done) of a period of three months. This is called a **"start-up period"**, which, in principle, has to add up to 90 calendar days. The start-up period (three months of actual work done and/or equivalent) must be worked continuously or otherwise with one or more employers.

! EXAMPLE

A worker starts work on 15 June 2014 and is employed from 15 June to 15 July 2014 by employer A. They are then hired on 1 August 2014 by employer B on an open-ended basis. The three months of start-up period are completed on 30 September 2014.

➔ **Using up "ordinary" holiday entitlement**

Before qualifying for supplementary holidays to which there is an entitlement, workers must first have used up the "ordinary" holidays granted on the basis of work during the holiday qualification period.

! EXAMPLE

A white-collar worker starts work on 1 September 2014 under an open-ended contract. The worker is entitled to supplementary holidays in 2014 and in 2015. However, they can only take supplementary holidays in 2015 once they have used up the 8 days of "ordinary" holidays (2 days for each month worked) that they can claim based on the work done by them in 2014 (from September to December).

! NOTE

- "Supplementary holidays" are optional. The worker is entitled to take them but is not obliged to use them up in whole or part (contrary to the case with "ordinary" holidays).
- Supplementary holidays (like "ordinary" holidays):
 - have to be taken by joint agreement between the employer and the worker;
 - have to be taken before 31 December of the current year and cannot therefore (in principle!) be carried over to the next year;
 - cannot be taken as half days, except in two specific situations.

LENGTH OF SUPPLEMENTARY HOLIDAYS

The right to supplementary holidays vests as work is done during the current year.

To calculate how many supplementary holidays workers are entitled to, they have to be placed at the specific time they ask to take the days, with a re-assessment on each occasion.

The rules governing supplementary holidays vary according to whether they are claimed by a white-collar or blue-collar worker.

➔ **Length of supplementary holidays for white-collar workers**

No sooner than the last week of the start-up period of three months (see above), the white-collar worker is entitled to take a maximum of **six days' supplementary holiday** under a work schedule of six days a week.

If they are employed under some other work schedule, they are entitled to supplementary holidays in proportion to the schedule they had during the start-up period. The following conversion formula has to be applied: $6 \times A/6$ (A = the number of work days per week), rounding the result up to the next unit.



After the start-up period, the length of the supplementary holidays is fixed at two days per month of work (or equivalent) in the employ of one or more employers during the current calendar year; the result may, if required, be reduced by the number of "ordinary" holidays calculated according to actual work done (or equivalent) in the holiday qualification period.

The length of supplementary holidays is calculated based on a working schedule of six days a week. If a white-collar worker is employed under another work schedule, they are entitled to supplement-

tary holidays in proportion to their work schedule. The following conversion formula has to be applied: $Y \times A/6$ (Y = the number of holidays expressed under a schedule of six days a week; A = the number of work days a week), rounding off to the upper unit.

➔ Length of supplementary holidays for blue-collar workers

The length of the supplementary holidays for blue-collar workers is based on the number of days of actual work and/or equivalent days during the current calendar year, according to the following table:

Number of days' normal actual work and equivalent days of non-work ⁽¹⁾	Number of days of holidays (expressed as days under a work schedule of 5 days a week full time)
231 and over	20
221 to 230	19
212 to 220	18
202 to 211	17
192 to 201	16
182 to 191	15
163 to 181	14
154 to 162	13
144 to 153	12
135 to 143	11
125 to 134	10
106 to 124	9
97 to 105	8
87 to 96	7
77 to 86	6
67 to 76	5
48 to 66	4
39 to 47	3
20 to 38	2
10 to 19	1
0 to 9	0

(1) The following are equated to actual days of work (RD of 30 March 1967, sec. 37*duodecies*):

- work-interruption work days equated to actual work for the purpose of calculating ordinary holidays (e.g., accident at work, illness, maternity leave, etc.);
- ordinary holidays and supplementary holidays (already taken).



Calculation of the length of supplementary holidays can be formulated as follows:

$$A \times (R/5) \times (Q/S)$$

A = total number of days of actual work done and equivalent during the current year;

R = number of days under the weekly work schedule (under a schedule of five days a week: 5; under a schedule of six days a week: 6; etc.);

Q/S = the fraction of employment where Q = the worker's weekly schedule and S = the full-time working time.

➔ Claiming

To take supplementary holidays, blue-collar workers have to file a claim using a form they send to the holidays fund of which their employer is a member or the National Office for Annual Holidays.

This form (available on the National Office's website at www.ONVA.be) will be signed and dated by the employer and the worker.

It has to be sent no earlier than 15 days before the last week of the start-up period and no later than 31 December of the current year.

RIGHT TO ORDINARY HOLIDAYS AND SUPPLEMENTARY HOLIDAYS

Workers starting or resuming work can be in a situation in which they qualify not only for "ordinary" holidays on the basis of work done during the preceding calendar year (= holiday qualification period) but also for supplementary holidays.

EXEMPLE

UA self-employed worker is hired as a salaried worker on 1 September 2014. In 2015, they are entitled to:

- "ordinary" holidays based on the work done from 01.09.2014 to 31.12.2014;
- supplementary holidays, which is a right that can exist for the year in which employment commences and also the next year.

In this case, for each claim for supplementary holiday, the following method has to be used:

- a) calculate the number of days of supplementary holiday that the worker is entitled to based on the work done in the current year according to the rules set out above depending on the worker's status (blue-collar white-collar);
- b) determine the number of ordinary holidays that the worker is entitled to based on the work done in the preceding year (= holiday qualification period);
- c) subtract from the number of supplementary holidays (a) the number of "ordinary" holidays (b).

The result of this subtraction gives the number of supplementary holidays that the worker can take at the time of their claim. If the result of this subtraction is equal to or less than zero, that means that the worker cannot (yet) claim supplementary holidays (at the time of the claim).

NOTE

The "ordinary" holidays always have to be used up first.

NB

If the supplementary holidays are claimed again during the year, the same process is gone through, not forgetting to subtract the "ordinary" holidays from the result obtained, even if they have already been taken at that time as well as the number of supplementary holidays already taken during the year.

Francis Verbrugge, Senior Legal Counsel



SOCIAL NEWS

BELGIUM AND LUXEMBOURG SIGN AN ACCORD ON CROSS-BORDER WORKERS

On 16 March 2015, the Belgian and Luxembourg Ministers of Finance signed an accord on the taxation of cross-border workers.

The accord lays down a tolerance rule allowing workers resident in one of the contracting states that work in the other contracting state and are physically present in their state of residence for a maximum of 24 days a year to continue to be fully taxable in the state where they usually work.

This way, Belgian residents taxable in Luxembourg on salaried work they do there can, under the

accord, carry on work in Belgium for a maximum of 24 days a year and be deemed to effectively do their work in Luxembourg throughout the taxable period.

The accord institutes a derogation from the principles of article 15 of the Belgian-Luxembourg double taxation treaty.

The tolerance rule applies as from 1 January 2015 but still needs to be set down in a rider to the treaty.

Isabelle Caluwaerts, Legal Counsel



WAGE ADJUSTMENTS

SALARY ADJUSTMENTS IN APRIL 2015

Indices for March 2015

Base complete index 2013:	▶ 100.32 (+ 0.06)
Base health index 2013:	▶ 100.73 (- 0.16)
Smoothed health index:	▶ 100.66 (+ 0.11)

Indexation and increases under collective agreements: non-exhaustive forecasts

Joint Bargaining Committee (CP) 218:	▶ + 0.43 % of index in January 2018
Average monthly minimum income/social security benefits:	▶ + 2 % in February 2018

Indexations and salary adjustments for April 2015

106.1	Cement plants: + 0.11% of index only on minimum salaries.
109	Clothing and tailoring business: + 0.04% of index on all salaries.
113.4	Tile works: + 0.30% of index on all salaries.
117	Oil industry and trading: + 0.11% of index only on minimum salaries.
120.2	Linen preparation: + 0.04% of index on minimum salaries (+ tensions) and the salaries actually paid.
124	Construction business: Negative indexation, but the social partners have decided in a CBA not to apply it and to offset it with the next indexation. Adjustment of the salary supplement for petrochemical companies.
125.1	Forest clearance: Negative indexation, but the social partners have decided in a CBA not to apply it.
125.2	Sawmills and related industries: Negative indexation, but the social partners have decided in a CBA not to apply it.
125.3	Lumber trading: Negative indexation, but the social partners have decided in a CBA not to apply it.
127/127.2	Fuel trading: Adjustment of the housing allowance.
130	Printing, graphic art and newspaper industry: Blue-collar workers in employment on 24.04.2014 (third phase of introduction of the new job descriptions): maximum + €1/hr of the positive difference between the actual salary and the scale salary.
136.1	Paper and cardboard processing: Manufacture of paper tubes: + 0.20% of index on all salaries.
140.2	Taxis: Driver staff, non-driver staff and garage staff: adjustment of the supplementary payment for economic redundancy as from 20.11.2014.
143	Maritime fisheries: + 0.0199% of index on all salaries. Warehousing sector: annual gross bonus of €150, except if there is an equivalent benefit within the company. Pro rata for part-time employees.
148	Fur and small hides: + 0.04% of index on all salaries.
201	Self-employed retail: Grant of a bonus of €188 gross or ecocheques of €250. Reference period from 01.04.2014 to 31.03.2015. Pro rata for part-time employees. Not applicable to students. Possibility to negotiate other rules in businesses with a union chapter.
202.1	Medium-sized foodstuffs companies: Grant of a bonus of €188 gross or ecocheques of €250. Reference period from 01.04.2014 to 31.03.2015. Pro rata for part-time employees. Not applicable to students. Possibility to negotiate other rules in businesses with a union chapter.
215	White-collar employees in the clothing and tailoring business: + 0.04% of index on minimum salaries and the salaries actually paid (in the same amount).
219	Services and bodies for technical inspections and testing of conformity: + 0.02% of index on all salaries.
301	Port companies: + 1.60% of index only on minimum salaries from the morning shift on 07.04.2015.



Indexations and salary adjustments for April 2015

- 301.1 tot 5** **Ports of Antwerp, Ghent, Brussels and Vilvoorde, Ostend, Nieuwpoort, Zeebrugge-Bruges:** + 1.60% of index only on minimum salaries from the morning shift on 07.04.2015.
- 304** **Entertainment industry:** Stage show presentations in the Walloon Region or the Brussels-Capital Region (registered with the Office for Social Security on the French- or German-language list): introduction of new job classification as from 01.01.2015.
- 322** **Temp agencies and recognised companies providing neighbourhood works or services:** Extension for the period from 01.01.2014 to 31.12.2014 of the pension bonus of JC no. 112 paid by the temp agency and fixed at 1.06% of the temp worker's gross salary (erratum).
- Extension and increase for the period from 01.01.2015 to 31.12.2015 of the pension bonus of JC no. 112 paid by the temp agency and fixed at 1.06% of the temp worker's gross salary.
- Extension for the period from 01.01.2014 to 31.12.2014 of the pension bonus of JC no. 142.01 paid by the temp agency and fixed at 1.06% of the temp worker's gross salary (erratum).
- Extension and increase for the period from 01.01.2015 to 31.12.2015 of the pension bonus of JC no. 142.01 paid by the temp agency and fixed at 1.19% of the temp worker's gross salary.
- Extension for the period from 01.01.2014 to 31.12.2014 of the pension bonus of JC no. 149.02 paid by the temp agency and fixed at 1.19% of the temp worker's gross salary (erratum).
- Extension and increase for the period from 01.01.2015 to 31.12.2015 of the pension bonus of JC no. 149.02 paid by the temp agency and fixed at 1.25% of the temp worker's gross salary.
- Extension for the period from 01.01.2014 to 31.12.2014 of the pension bonus of JC no. 149.04 paid by the temp agency and fixed at 1.12% of the temp worker's gross salary (erratum).
- Extension and increase for the period from 01.01.2015 to 31.12.2015 of the pension bonus of JC no. 149.04 paid by the temp agency and fixed at 1.19% of the temp worker's gross salary.
- 326** **Gas and electricity:** + 0.11% of index only on minimum salaries.
- 328.3** **Urban and district transport in the Brussels-Capital Region:** Grant of ecocheques in a total amount of €160 to full-time employed workers actually working throughout the full reference period. Pro rata grant to part-time workers and workers that did not work the full reference period. Reference period from 01.01.2014 to 31.12.2014. Payment no later than 31.12.2014.
- Grant of ecocheques in a total amount of €110 to full-time employed workers actually working throughout the full reference period. Pro rata grant to part-time workers and workers that did not work the full reference period. Reference period from 01.01.2013 to 31.12.2013. Payment no later than 31.12.2013.
- 331** **Flemish welfare and health sector: Granted childcare:** introduction of a guaranteed minimum salary for providers – lowest step 2 – that receive subsidies for achieving the income tariff for group care (earlier, childcare under supervision). This guaranteed minimum salary corresponds to the general actually guaranteed minimum salary of JC 330 increased by half the difference between this minimum salary of JC 330 and the guaranteed minimum salary of JC 331.
- Services for child-carers: introduction of a guaranteed minimum salary (lump-sum monthly payment for home working) from 01.01.2015 to 31.12.2016.
- Health promotion and safety: introduction of a guaranteed minimum salary and new scale salaries from 01.01.2015, except for services and centres for health promotion that entered into a company CBA before 01.01.2015 with other transitional provisions.



If you are a member of the Payroll Agency and index forecasts for other business sectors are of interest to you, you may send an e-mail to indexprognoses@partena.be.

COLOPHON

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