



## **Vacations – the legal frameworks of Poland and Portugal**



## Portugal - Poland: Introduction



Vacations are a fundamental aspect of employment law, playing a decisive role in promoting the health, well-being, and productivity of employees. It provides employees the necessary time to rest, connect with their families and friends and engage in cultural activities.

All over Europe, the right to paid vacations is recognized and protected across jurisdictions, as an essential element of employment law. Notwithstanding, while the right to time-off is generally recognized, it's duration and specific regulations differ from country to country, reflecting each nation's specific economic and cultural context.

For employers, understanding these rules is of paramount importance, both in complying with the legal framework but also in fostering a healthy and productive work environment.

In fact, adequate rest improves job satisfaction, morale and enhances the employees' performances upon their return.



## I. What is the amount of vacation days an employee is eligible to use per year?

As a general rule, employees in Portugal are entitled to 22 days of paid vacation per year. These 22 days of vacation are due on 1 January of each year – as the right of the employee to take vacation days refers to the work performed in the previous calendar year.

There are exceptional rules for the years of beginning and of termination of employment contracts.

One exception to this general rule that is established in the Portuguese Labour Code is that the employee may waive the use of vacation days which exceed 20 business days in one year. This waive does not reduce remuneration and allowance related to that vacation period, which is added to the remuneration for work provided on those days.

In addition, many collective bargaining agreements applicable in Portugal establish rules which grant the employees additional vacation days. One rule which is particularly common in collective bargaining agreements is the *majoração de férias* (loosely translated to “additional vacation days”), which grants the employees the right to up to three additional days of vacation (to a maximum of 25 business days) with basis on attendance.

This right must be exercised in a way that allows the employee to achieve both physical and mental recovery, as well as the opportunity to engage in personal, family, and social activities. During the vacation period, the employee should not engage in any paid work, unless they are already doing so cumulatively or the employer has expressly authorized it.

The remuneration for vacation days is the same as the salary the employee would receive if they were working. In addition to the paid vacation days, employees are entitled to an annual vacation allowance, equivalent to one month’s salary, which includes their base salary and any other benefits related to the specific nature of their work. This is commonly referred to as the “13th month.”

Along with the Christmas allowance, employees in Portugal effectively receive 14 months’ worth of salary each year.





## I. What is the amount of vacation days an employee is eligible to use per year?

Each person employed under employment contract in Poland has a right to either 20 or 26 days of mandatory vacation leave each calendar year (only the part-time employees may use less of it). The length of it depends on general work experience and education e.g. a university graduate with master's degree and 2 years of work experience (after the graduation) is going to be eligible to 26 days of leave.

Only the experience gained under employment agreement entitles an employee to vacation, however there are plans to extend it also to time worked under B2B.

As a rule, the vacation should be granted continuously, over a single period however it rarely happens in practice. Nevertheless, an employee is eligible to have at least 14 days of continuous vacation (including standard days off, e.g. weekends which are not considered as vacation days) each year. What is more 4 out of 20/26 vacation days may be used on demand i.e. it should be granted if an employee asks for it before the work starts on such day.

An employee cannot waive the right to vacation. It's the employer's obligation to grant it.

The remuneration for the time of vacation is calculated as an average, based on remuneration received during months preceding the vacation (it may include some of the bonuses paid during this time). In case an employee does not use the accrued vacation leave before the end of employment, the employer is obliged to pay the employee an equivalent for such unused vacation.



## II. Who determines when an employee is going to use the vacation days?

Vacations are scheduled through mutual agreement between the employer and the employee.

In the absence of an agreement, the employer schedules the vacations.

Notwithstanding, the employer must consult the employees' committee or, in its absence, the inter-union committee or the union committee representing the employee concerned. In companies with 10 or more employees, the employer may only schedule the vacations between 1 May and 31 October, unless the applicable collective bargaining agreement or a statement from the employees' representatives allows differently.

When scheduling vacations, the most popular periods should be shared, whenever possible, benefitting employees alternately according to the periods taken in the two previous years. Spouses, as well as people living in a de facto union or common economy who work in the same company or establishment are entitled to take vacation days in the same period, unless this entails serious prejudice to the company.

A vacation plan must be prepared and posted in the workplace until 15 April of each year – and it must stay posted, at least, until 31 October of the same year.



## II. Who determines when an employee is going to use the vacation days?

As a rule, a vacation schedule should be prepared at each workplace. It's made by the employer who should take under consideration both the employees' requests as well as 'need to ensure the normal course of work'. It means that the employer has a right to decide on the time the vacation is used by the employee. However, the employee cannot be treated unequally in this regard.

The vacation schedule must be communicated to employees however there is no mandatory time in the year when this must happen. There is no obligation for the schedule to cover whole year, so it is possible to have a separate schedule e.g. only for each quarter of the year.

It is also possible not to create such schedule. In such case the dates of vacation leave should be set 'in agreement' with the concerned employee so the employer cannot oblige the employee to use the vacation during the days which suit only the employer. An employer may interrupt the vacation which already started but only when the employee's presence is required at the workplace due to circumstances unforeseen at the time of the start of the leave. If this happens the employer is obliged to cover the costs incurred by the employee in connection with cancellation of such vacation.

In most cases it concerns the cost of travel back from vacation. It is also possible for an employer to reschedule the vacation which was already approved but only due to the special needs of the employer and if the absence of the employee would cause serious disruption to the course of work.

The use of vacation days has to be always accepted by employer. Therefore, an employee cannot start vacation without such approval.



### III. Are there any special rules on use of vacation days accrued in past years?

The general rule establishes that vacation days must be enjoyed on the year on which they are due.

By mutual agreement between the employer and the employee, vacation days accrued in one year may be taken until 30 April of the following year, either in combination with or separate from the vacation days accrued in that same year. This rule does not require the employer's consent if the employee wishes to take their vacation with family members residing abroad. Furthermore, half of the vacation days due from the previous year may be taken together with the vacation days for the current year, subject to agreement between the employer and the employee.

The fact that the employee does not use their vacation days by 30 April of the subsequent year does not mean they lose the right to take those days. However, it may result in consequences for the employer. In such cases, if the employee does not intend to take their vacation days by the specified date, it is advisable for the employer to schedule the vacation days without the employee's agreement.

If the employer culpably prevents the employee from taking vacations, the employee is entitled to compensation in the amount of three times the salary corresponding to the missing period, which must be taken by 30 April of the subsequent calendar year.



### III. Are there any special rules on use of vacation days accrued in past years?

Whole vacation should be used during the year it was accrued. If this is not possible, such overdue vacation has to be granted not later than until end of September next year.

In such special cases the general rules on the way the vacation is scheduled do not apply. The employer may order an employee to use the vacation during the period determined by the employer even if the employee does not agree on it.

Failure to grant the employee the vacation within the above-mentioned deadline may result in following consequences for the employer:

- payment of fine equal to approx. up to EUR 7.000
- the employee may request the labour court to order the employer to grant the
- vacation which the employer is obliged to do.





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