TOBNA journal for Academic scientific studies ISSN 2661-7633 / EISSN 2716-8883

Year:2024 Vol : 07 No : 02 Page : 1848 - 1871

Legal and exceptional holidays are a special in Algerian labor legislation according to the latest legal amendments

Talibi Messouda (Department inspector for labor), University of Algiers -1- Youssef Ben Khadda, Algeria,
massoudatalibi@gmail.com

Send Article Date 2024-08-07 Date of acceptance of the article 2024-09-08

Abstract :

Legal holidays and absences are considered an exception to the rule of work for pay. The Algerian legislator has regulated rest days, legal holidays and authorized absences for the worker with the aim of regulating the employment relationship and ensuring the rights of that guarantee the worker's comfort and health. It also stipulates the cases in which a worker may be absent in order to carry out an activity parallel to his work, which is considered an exception to the principle of not combining two jobs.

Key words:

the worker, Legal, absences, license,Create an institution.

Introduction

Various international and national labour legislations aim to protect the fundamental rights of workers within the framework of labour relations by ensuring the necessary respect for the basic rights and freedoms of labour, including the right to rest and the right to holidays. Law No. 11-90, dated April 21, 1990, related to labour relations, organizes these rights in Chapter IV under the title "Legal Rest, Holidays, and Absences." According to Article 35 of the amended and supplemented Law No. 11-90 on labour relations, "Absences, holidays, and feasts are considered legal rest." Hence, legal rest includes weekly rest, legal holidays, as well as justified paid absences, along with other exceptional unpaid absences.In the same context and within the framework of exceptional legal holidays, to encourage workers and employees to contribute to economic investment, the legislator has established a new exceptional holiday under Law No. 16-22 dated July 20, 2022, supplementing Law No. 11-90 dated April 21, 1990, on labour relations (published in the Official Gazette No. 49 for the year 2022), adding it as a case of suspending the labour relationship, which is the exceptional holiday requested by the worker to establish a business.

Therefore, based on the aforementioned, we have addressed the topic of legal and exceptional holidays by posing the following question: When is the worker in a state of legal rest and what are the legal permissions granted to the worker to be absent? This question was answered by studying the right to legal rest in the first section and exceptional holidays, particularly under the new legal and regulatory texts, in the second section. These exceptional holidays include the aforementioned exceptional holiday, leave for union representatives, and paid absences authorized by Executive Decree No. 360-23 dated Rabi' al-Thani 2, 1445 (October 17, 2023), which defines the procedures for deputation for electoral mandates and the benefit of absence permits and union training leave in public institutions and administrations, as well as authorized paid absences.

The first topic: The Right to Legal Rest

The Algerian legislator has established the right for every worker subject to the provisions of labour law to benefit from legal rest. This aims to rejuvenate the worker's activity and rekindle their work spirit. The intent is also to allow the worker to recover from the mental and physical effort exerted in performing the tasks assigned to them under the labour contract, which is governed by legislative and regulatory labour provisions. This rest is detailed in Chapter Four of Law No. 11-90 related to labour relations, as amended and supplemented, under the title "Legal Rest, Holidays, and Absences."It is important to note that any day a worker is absent from work based on a legal reason is considered legal rest, regardless of the legal term used to describe the absence. Therefore, in addition to legal holidays, we must also consider legal rest, which includes weekly rest and legally authorized and justified absences. These are also regarded as legal holidays, but they have specific conditions for utilization. Workers eligible for such rest must provide justifications as stipulated by law, unlike legal holidays, which are pre-approved and do not require justifications from the worker.

Therefore,we have studied this aspect by addressing the following points:

First Requirement: The Right to Weekly Rest and Absences

Firstly: Legal Rest

1- Weekly Rest

Law No. 11-90, dated April 21, 1990, concerning labor relations, as amended and supplemented, includes provisions in Chapter Four under the title "Legal Rest, Holidays, and Absences." According to this law, workers are entitled to one full day of rest per week on regular days. The law specifies that the weekly rest day is Friday. El Wali (provincial governor) determines this rest day

through a decree applicable to all institutions or some of them, depending on the nature of each institution's activities[1].

2- Cases of Postponing Weekly Rest

In some exceptional cases, the weekly rest day for a worker can be postponed. These cases include:

a-Workers Required to Work on the Legal Rest Day: Workers who work on their designated rest day are entitled to an equivalent compensatory rest day. They also have the right to compensation for the additional hours worked.

b-Operational or Organizational Necessities of the Institution: If the necessity of the activity or the interest of the institution's organization and productivity requires postponing the weekly rest day, it can be rescheduled to another day. Additionally, the institution may grant the rest day alternately if it is necessary for the institution's interest or if halting work on the weekly rest day would cause harm to the institution.

3- Penalties for Not Providing Weekly Rest to Workers

According to Article 33 of Law No. 11-90 and Article 138 of the same law, as amended and supplemented, labour inspectors are responsible for monitoring violations of the law's provisions in accordance with labour legislation. Article 99 of the 2018 Finance Law, in conjunction with Article 141 of Law No. 11-90, stipulates that any employer who violates the provisions related to legal rest is subject to a financial penalty ranging from 10,000 DZD to 20,000 DZD. The penalty amount is determined based on the number of affected workers. In cases of repeated violations, the penalty increases to between 40,000 DZD and 50,000 DZD, with the amount being multiplied according to the number of workers involved.

Secondly: Legal Absences

1- Paid Absences

A worker may be absent without losing their wage, provided that such absences are considered working time for the affected workers[2]. These absences are legally justified and are valid if the employer is notified in advance and the worker provides justifications for the following reasons:

[1] - Ould Sbiman Hamid, the vacation system within the framework of the Algerian legislative system, a case study of the Trade Directorate of Tzi Ouzou State, a memorandum submitted to complete the requirements for obtaining a master's degree in political science, Mouloud Mammeri University, academic year 2019/2020, p. 35.

[2]-Article 20 of Executive Decree No. 120-93 dated Dhu al-Qi'dah 23, 1413 (May 15, 1993), concerning the organization of occupational medicine, published in Official Gazette No. 33 for the year 1993.

a. Legal Absences with Scientific and Professional Nature: Workers have the right to take absences without loss of pay, with these periods counted as actual working time and included in the calculation of annual leave, provided they inform the employer and submit justifications in advance for the following reasons:

- For performing duties related to union representation, every worker who holds the position of a union representative is entitled to special paid absences for carrying out their union tasks. They are also entitled to attend union training courses, provided they notify the employer in advance and submit all necessary documentation[1]. Additionally, the law allows a union branch member or council member to be absent for representation purposes, based on their request, after obtaining prior authorization from the employer[2].
- To attend professional or union training courses approved by the employer and to participate in academic or professional examinations, as stipulated in Law No. 11-90.

- **Absences for Training and Skill Improvement:**Every employee is entitled to special paid absences if they attend training courses or engage in activities to improve their skills[3].

B- Socially Justified Legal Absences:

Workers are entitled to three full days of paid leave for the following events:

- Marriage of the worker
- Birth of a child to the worker
- Marriage of the worker’s child or death of the worker’s direct ancestors, descendants, or in-laws (first-degree relatives) or the spouse's direct relatives
- Death of the worker’s spouse
- Circumcision of the worker’s child

Additionally, Article 55 of Law No. 11-90 grants breastfeeding mothers the right to be absent for two hours each day during the first six months following

[1]- Article 106 of Law No. 11-90 dated Ramadan 26, 1410 (April 21, 1990), concerning labor relations, as amended and supplemented, published in Official Gazette No. 17 for the year 1990.

[2]- Executive Decree No. 360-23 dated Rabi' al-Thani 2, 1445 (October 17, 2023), which defines the procedures for deputation to hold a union position and for benefiting from leave and union training leave in public institutions and administrations.

[3]- Article 60 of Law No. 11-90

the end of maternity leave, and one hour each day during the following six months. These absences can be scheduled in a way that suits the worker.

2- Exceptionally Justified Legal Absences

Workers are entitled to authorized paid absences from the employer, with this type of leave being defined in the internal regulations of the institution[1].In the public service law, such absences are limited to 10 days per year.

Second Requirement: The Right to Legal Holidays

Firstly : Annual Leave

1- Definition of Paid Annual Leave

The Algerian legislator does not explicitly define "annual leave" in the current labour law but rather organizes its provisions. Annual leave refers to the period designated for rest that the employer is obligated to provide to workers each year. During this period, the worker ceases to perform their duties while retaining their salary.

Annual leave is also defined as the vacation that a worker is entitled to on a periodic basis for each year of service with the employer. This entitlement is accrued for each year of the worker's service, typically calculated based on the length of employment and the applicable labour laws[2].

The legislator aims, through the provision of annual leave, to enable workers to rest and recover, thereby maintaining their health and restoring their abilities to continue performing their work effectively[3].

2- Determination of Paid Annual Leave Duration

The nature of the work performed by a worker often requires significant effort, which can negatively impact their health if they continue without rest for an extended period. To address this, the legislator established paid annual leave to allow workers to recover their strength and vitality. The duration of this leave is defined as follows:

A. Duration of Annual Leave: Article 41 of Law No. 11-90states: "Paid annual leave is calculated on the basis of two and a half days per month of work, not

[1]- **Article 56 of Law No. 11-90**, dated Ramadan 26, 1410 (April 21, 1990), concerning labor relations, as amended and supplemented, published in Official Gazette No. 17 for the year 1990, addresses the provisions related to various types of employee leave.

[2]-BouazizLinda. "Paid Annual Leave in Algerian Labour Law." *Journal of Advanced Legal Studies*, Issue 35, Year 2019, pp. 7.

[3]- Article 02 of Law No. 08-81, dated June 27, 1981, concerning annual leave, published in Official Gazette No. 26 on June 30, 1981, has been repealed.

exceeding a total of thirty (30) calendar days for one year of employment." This indicates that the Algerian legislator set a maximum limit for annual leave at thirty (30) days per year, based on the worker's period of employment within the year[1].

The standard duration of annual leave is set at thirty (30) days. However, exceptions allow for an extension of this period for certain workers who perform particularly arduous or dangerous tasks. This is confirmed by Article 45 of Law No. 11-90, which states:

"The main leave may be extended for workers who carry out, in particular, hard or dangerous work or work that causes physical or mental strain."

It is evident that the legislator allows for the extension of annual leave for workers engaged in dangerous jobs that have a significant impact on physical and mental health. The text does not specify the number of additional days; instead, it leaves this task to collective agreements. This approach allows the parties involved in the labour relationship to negotiate the terms and conditions of work, including the extension of annual leave[2].

The second category of workers for whom the Algerian legislator has decided to increase the number of leave days includes those working under harsh climatic conditions, particularly in the southern regions, where there are significantly high temperatures. Additionally, collective agreements may grant an extra ten (10) days of leave or more, depending on the agreements and collective contracts[3].

B. Cases Affecting the Duration of Paid Annual Leave: Several cases may affect the duration of annual leave, including:

- **Division of Annual Leave Duration:**The employer has the authority to determine the scheduling of annual leave and to divide it into segments. This authority is based on the employer's role in organizing and managing the institution. This is confirmed by Article 51 of Law No. 11-90, which states:

[1]-Law No. 11-90, dated April 21, 1990, concerning labour relations, published in Official Gazette No. 17 on April 26, 1990, as amended and supplemented by: law No. 29-91, dated December 21, 1991, published in Official Gazette No. 68 on December 25, 1991, decree No.21-96, dated June 9, 1996, published in Official Gazette No. 43 on July 16, 1996, decree No. 02/97, dated January 11, 1997, published in Official Gazette No. 3 on January 12, 1997

[2]- Article 45 of Law No. 11-90, as previously referenced.

[3]-Article 42 of Law No. 11-90, as amended by Article 06 of Decree No. 21/96,as previously referenced.

"The employer determines the schedule of annual leave and its division..."

- **Postponement of Annual Leave:**
  Law No. 11-90 does not include any provisions addressing this situation. In contrast, Law No. 08-81 specifies several exceptional cases under which annual leave may be postponed. These cases include urgent service needs or public interest, prevention of an anticipated accident or addressing an actual accident, union, political, or professional training, legally recognized family obligations, and long-term illness or legally recognized and documented accidents.

Therefore, there are reasons for postponing annual leave that can be attributed to either the employee or the employer. If the reasons for postponement are due to the employer, the employer must provide proof, as the default position is for the employee to receive their annual leave in full at the designated time. Additionally, if the employee's leave is delayed, they are entitled to claim it after the year it was due. The scheduling of leave does not preclude its postponement or accumulation.

- **Possibility of Interrupting Annual Leave:**

The parties involved in the labour relationship have the right to interrupt annual leave under two conditions:

- **Urgent Service Needs:** The law grants the employer the authority to interrupt annual leave in cases of urgent service needs. However, the law does not specify what constitutes such an urgency or provide an explanation for it, despite its significance for employees. This is outlined in Article 48 of Law No. 11-90.
- **Employee Illness:** An employee has the right to interrupt their annual leave if they fall ill[1]. This applies whether the illness results from a work-related accident, occupational disease, common illness, or childbirth for women. The employee can then benefit from the entitlements associated with sick leave.

3- Method for Calculating the Duration of Annual Leave:

The duration of annual leave is calculated based on the work performed during the reference period extending from July 1 of the year preceding the leave to June 30 of the leave year[2]. There are two methods for this calculation:

- **First Method:** The reference period is considered a working year starting from July 1 of the preceding year and ending on June 30 of the leave year.

[1]-Article 50 of Law No. 11-90, as previously referenced

[2]According to Rashid Wahid, Labor Relations (in Light of Economic Reforms in Algeria), Homel Publishing and Distribution House, 2005 edition, pp. 130, 132.

This method applies to employees who have been with the organization for a long time (long-term employees), as confirmed by Article 40 of Law No. 11-90.

- **Second Method:** This method applies to new employees, where the reference period is calculated starting from the date they began working. For example, if an employee started work in January 2019, their reference year for calculating annual leave would begin from this month. This is confirmed by Article 40, Paragraph 2 of Law No. 11-90, which states: "... the reference period for new employees is calculated starting from their date of employment."

The reference year consists of several months, and for each month worked, an employee earns two and a half days of leave. There is a correspondence between the length of work and the period of leave[1]. The calendar month is considered as thirty (30) days in calculating the leave duration, as stated in Article 43, Paragraph 1 of Law No. 11-90:

- Each period equal to 24 full working days is considered equivalent to one month of actual work.
- Each period of work equivalent to four (4) weeks is considered equivalent to one month of actual work**.**

Article 07 of Decree No. 21-96, dated June 9, 1996, adds that for new employees, any period of work exceeding fifteen (15) days is considered equivalent to one month of actual work[2].

The Algerian legislator has also addressed the right to annual leave for part-time and seasonal workers. According to Article 43, Paragraph 02 of Law No. 11-90, the month for these categories is determined based on hours worked rather than days worked. Therefore, they are entitled to annual leave equivalent to one month after completing 180 hours of work.

When calculating annual leave, periods of actual work performed by the employee,periods of annual leave[3], paid special absencesas stated in Article 54 of Law No. 11-90 related to professional or family circumstances authorized by the employer, rest periods such as weekly rest[4], international, religious, and national holidays, as well as maternity leave periods, time spent performing

[1]- Article 41 of Law No. 11-90 states: "Paid leave is calculated on the basis of two and a half days per month of work."

[2]- Article 07 of Order No96-21 , previously mentioned.

[3]- Article 46 of Law 11-90, as previously referenced.

[4]- Articles 33 to 38 of Law 11-90, as previously mentioned.

national service, illness, work-related accidents [1], and periods of paid or authorized absences by the employer, are all considered as effective working time for which the employee is compensated. This is as stipulated in Article 46 of Law No. 11-90.

We notice that the Algerian legislator has introduced flexibility in calculating the duration of annual leave to allow the employee to benefit from a sufficient amount of rest, regain their strength and vitality, and maintain their physical and mental health.

4- Receiving Compensation During Annual Leave

To achieve the intended goal of annual leave, the Algerian legislator decided that compensation (salary) should be provided to the employee. The obligation to pay compensation is as follows:

a- Payment of Annual Leave Compensation by the Employer: The employer must pay the annual leave compensation to the employee before the employee goes on leave. This compensation is calculated based on one-twelfth of the full salary that the employee would have received during the reference year for the leave. According to Article 52 of Law 11-90, the compensation must not be less than the salary the employee would have earned if they had continued working. The legislator used the term "compensation" to ensure that the amount paid to the employee is at least equivalent to their salary. This includes the basic salary and various allowances such as family allowances, cost-of-living adjustments, and special occasion bonuses. However, the compensation for annual leave does not include individual or collective performance-related bonuses.

B - Payment of Annual Leave Compensation by the National Fund for Paid Leave and Unemployment Due to Adverse Weather Conditions in the Construction, Public Works, and Irrigation Sectors: Normally, the employer is responsible for paying annual leave compensation. However, the situation for workers in the construction, public works, and irrigation sectors, which is characterized by some degree of mobility and the effects of adverse weather conditions on employment relations, has led to the establishment of a dedicated fund. This was created by Executive Decree No. 45-97 dated February 4, 1997, in application of the provisions of Ordinance No. 02-97 dated January 11, 1997,

[1]- According to Law No. 11-83, dated July 2, 1983, concerning social security (Official Gazette No. 16, Volume 28, published on July 15, 1983), amended and supplemented by Decree No. 28-84, dated February 11, 1984, which specifies the application procedures for Title II of Law No. 11-83 concerning social security (Official Gazette No. 07, published on August 14, 1984), and further amended and supplemented by Decree No. 88-09, dated October 18, 1988 (Official Gazette No. 42, published on October 19)."

which amends Law No. 11-90 dated April 21, 1990, concerning labour relations.The specific systems of "Paid Leave" and "Unemployment Due to Adverse Weather Conditions" were applied to the activities in the construction, public works, and irrigation sectors through Executive Decrees No. 48/97 dated February 4, 1997, and No. 212/98 dated June 20, 1998. Article 52 bis, added by Ordinance No. 02-79, stipulates the creation of a special fund responsible for paying annual leave compensation to workers in professions and activities characterized by irregular work patterns, i.e., those not working continuously throughout the year.Thus, the National Fund for Paid Leave and Unemployment Due to Adverse Weather Conditions in the Construction, Public Works, and Irrigation Sectors was established to manage paid leave. Executive Decree No. 45-97[1] specifies the list of activities covered by the fund, while Article 2 of Executive Decree No. 48-97[2] outlines the activities included within its scope.

In order for the worker to benefit from the compensation, the employer is required to pay a subscription rate of 21% to the fund,12% which is based on the social security contribution base. The burden of these contributions is solely on the employer, which could cause financial strain and potentially lead them to not report the workers, thus depriving them of the service. It would be preferable if this rate were divided.

The employer alone bears this percentage[3], it is noted that the employer bearing the contributions alone may cause him/ her financial strain, which might lead him/ her to not declare the employees, thus depriving them of benefiting from serving him/ her. Therefore, it is better to divide thispercentage.

The beneficiaries:

Every employeewho has completed at least 15 days of work with an employer or multiple employers affiliated with theNational Fund for Paid Leave

[1]- Executive Decree No97-54 dated February 4, 1997, Establishing the National Fund for Compensation for Paid Leave and Unemployment Due to Adverse Weather Conditions in the Construction, Public Works, and Irrigation Sectors, Official Gazette No. 8, published on February 5, 1997.

[2]- Article 02 of Executive Decree No97-48 dated February 4, 1997, which Defines the List of Professions, Branches, and Sectors Subject to Paid Leave, Official Gazette No. 8, published on February 5, 1997.

[3] Article 02 of Executive Decree No. 97-46 dated February 4th, 1997, determines the percentages of contributions payable to the National Fund for Compensation of Paid Leave and Bad Weather Unemployment in building, public works and hydraulic sectors, under the title of paid leave and bad weather unemployment, O, G, No. 8, issued on February 5th, 1997.

and Bad Weather Unemployment in building, public works and hydraulic sectorsis entitled to paid leave.

The right to paid leave is earned for the entire period of work completed during the reference year, i.e the period between July 1st of the year prior to taking the vacation to June 30th of the year the vacation is taken.

Paid leave services begin on July 1stfollowing the reference year and are due until the rights expire. Thus, the services of "paid leave" for the reference year start on July 1st.

c :The protection provided to the employee during the paid annual leave:

- **The protection provided to the employee**

As a protection for the employee, the employer is prohibited from terminating the employment relationship during the annual leave, as confirmed by Article 49 of Law No. 90-11, which states: "It is not permissible to suspend or terminate the employment relationship during the annual leave."the employeris prohibited from unilaterally terminating the contract or dismissing the employee as a disciplinary measure.Once the annual leave period ends, the employees return to their position. However, if disciplinary dismissal procedures coincide with the annual leave period, Articles 49 and 145 of Law No. 90-11do not apply in this case.So,the employer would dismiss the employees and pay them compensation for the annual leave.The employer would be penalized with a fine ranging from 10,000 DZD to 20,000 DZD, multiplied by the number of concerned workers. Upon reinstatement, the fine increases to a range of 40,000 DZD to 50,000 DZD, also multiplied by the number of concerned workers.

- **Multiple penalties imposed for violating the rules regarding paid annual leave:**

Due to the exhaustion caused by continuous work, the Algerian legislator has decided on a set of penalties for violating the provisions related to paid annual leave. These penalties include civil penalties, such as nullification (1), as well as criminal penalties, represented by financial fines.(2)

- **Civil penalties imposed for violating the rules regarding paid annual leave:**

The Algerian legislator considers annual leave as part of public policy,meaning that it is not possible to agree on less thanits stipulated durationor waive it once it has been established. Any waiver, whether with compensation or without, explicitly or implicitly, is considered absolutely null and void.This right represents the minimum that employeescan enjoy, which is why any agreement depriving anemployee of this right is deemed null and void.Additionally, replacing it with monetary compensation is prohibited, as it

would lose its meaning and purpose.This is confirmed by Article 39/2 of Law No. 90-11, which states: “Any waiver by the employee of all or part of their leave is null and void and of no effect.”Therefore, any employment relationship that does not conform to the legislative provisions enshrined in the labour relations law is void, as confirmed by Article 135/1 of Law No. 90-11, which states: 'Any employment relationship not conforming to the applicable legislative provisions is null and void and of no effect.'"

- **Criminal penalties imposed for violating the rules related to the right to annual leave.**

In order to preserve the health of the worker on one hand, and the productivity within the employing entity on the other hand, the Algerian legislator has decided on the right to annual leave.Labour inspectors monitor the employing entity's compliance with providing statutory leaves to workers.This is achieved through the monitoring of the annual leave register, which the employer is required to maintain,as stipulated in Article 2 of Executive Decree No. 96-98 dated 17Shawwal 1416 corresponding to March 6th, 1996, specifies the list of registers and records required by employers, along with their contents.However, in the case where the employer refuses to provide the annual leave record, misuses it, its absence, or if the employer fails to enable the worker to exercise the right to annual leave according to Article 39 of Law No. 90-11, Article 138 of the same law, Article 154, and Article 144 as amended by Article 99 of Law No. 17-11 dated December 27th , 2017, which includes the Finance Law for the year 2018, O, G, No. 76, issued on December 28th, 2017.

Or reducing its duration, or calculating it in a manner that violates the law according to Article 40 and Article 145 of the aforementioned Law No. 90-11, as amended by Article 99 of Law No. 17-11 dated December 27th, 2017, which includes the Finance Law for the year 2018, O, G, No. 76, issued on December 28th, 2017.

Or if employer pays compensation less than what is legally stipulated in accordance with the provisions of Article 41 and Article 145 of the aforementioned Law No. 90 -11, as amended by Article 99 of Law No. 17-11, he/ she is subjected to a financial penalty ranging from 10,000 DZD to 20,000 DZD, The penalty is repeated according to the number of violation, and the financial fine is doubled in case of recurrence, ranging from 40,000 DZD to 50,000 DZD.This is confirmed by Article 99 of Law No. 17-11, which amended the penal provisions relating to labor relations, stating: "A financial penalty ranging from 10,000 DZD to 20,000 DZD shall be imposed for each observed

violation and according to the number of affected workers, on anyone who violates the provisions of Articles 38 to 52 above."

In case of recurrence, the penalty ranges from 40,000 DZD to 50,000 DZD and is multiplied according to the number of affected workers[1]. The same penalty applies in case of violations against the provisions of Articles 38 to 52 of Law No. 90-11 related to labor relations.

The Algerian legislator did well by increasing the value of financial fines, as their previous values were very low and did not achieve the intended goal. It is often the case that employers violate the workers' right to annual leave, granting them only weekly rest and ignoring their entitlement to annual leave, granting them only part of it, or refusing to pay the compensation for it.

secondly: Other Paid Leaves

1- official public holidays:

The following days are considered official paid holidays:

a- National holidays:

- July 5th(Independence Day): 1 day
- November 1st(Revolution Day): 1 day
- January 12th (Amazigh New Year): 1 day
- May 1st(Labor Day): 1 day

B- Religious holidays:

- Eid al-Fitr (Eid al-Saghir): 3 days
- Eid al-Adha (Eid al-kabir): 3 days
- The first of Muharram (Islamic New Year): 1 day
- Ashura (10th of Muharram): 1 day
- Mawlid (the birth of the prophet Muhammad[peace be upon him]): 1 day

The aforementioned days are considered paid legal holidays for all employees of public administrations, public institutions and bodies, specialized services, local communities, and commercial, industrial, artisanal, and agricultural institutions, including hourly or daily workers.

The following days are considered paid legal holidays, each year, for Algerian and foreign employees who are Christians in public administrations, public institutions and bodies, specialized services, local communities, and commercial, industrial, artisanal, and agricultural institutions:

- Easter Monday
- The Ascension Day
- The Assumption Day

[1]Law No. 17-11 dated December 27th, 2017, which includes the Finance Law for the year 2018, O, G, No. 76, issued on December 28th , 2017.

- ChristmasDay

An employee adhering to a religion other than Christianity also benefits from paid holidays according to the provisions of this article, even if this employee is employed on an hourly or daily basis.

The following days are considered paid legal holidays, each year, for Algerian and foreign employees who are adherents of the Jewish religion (Judaism), in public administrations, public institutions and bodies, specialized services, local communities, and commercial, industrial, artisanal, and agricultural institutions:

- New Year's Day (January 1st): 1 day[1]
- Yom Kippur
- Easter Day

An employee adhering to a religion other than Judaism also benefits from paid holidays according to the provisions of this article, even if this employee is employed on an hourly or daily basis.

2- Special Exceptional Holidays:

- **Hajj Leave**: An employee is entitled to a special paid leave to fulfill their obligation to go on pilgrimage, once during their professional career.
- **Sick Leave**: An employee is entitled to a justified paid absence according to the provisions of Article 20 of Executive Decree No.93-120 dated May 15th, 1993, concerning the organization of occupational medicine. The employee is entitled to paid leave in the case of clinical and para-clinical medical examinations, and the time required for these examinations[2], and in the case of periodic and special medical examinations, as well as initial medical examinations for employment[3].
- Medical examinations required for resuming work after a sick leave that lasted at least 21 days[4].

[1]Refer to Law No. 63-278 dated July 26th, 1963, concerning the list of legal holidays, O, G, No. 53 issued on August 2nd, 1963, as amended and supplemented by Ordinance No. 66-153 dated June 13th, 1966, O, G, No. 52 issued on June 17th, 1966, as amended and supplemented by Ordinance No. 68-419 dated June 26th, 1968, O, G, No. 56 issued on July 12th, 1968, as amended and supplemented by Law No. 05-06 dated April 26th, O, G, No. 30 issued on April 27th, 2005, as amended and supplemented by Law No. 18-12 dated July 2nd, 2018, O, G, No. 46 issued on July 29th, 2018.

[2]Refer to Article 17 of Law No. 88-07 dated Jumada II1408 corresponding to January 26th, 1988, concerning health prevention, safety, and occupational medicine and Article 13 of Executive Decree No. 93-120dated 23 Dhu al-Qi'dah 1413 corresponding to May 15th, 1993, related to the organization of occupational medicine, O, G, No. 33, 1993.

[3]Article 16 of Executive Decree No. 93-120 dated 23 Dhu al-Qi'dah 1413 corresponding to May 15th, 1993, concerning the organization of occupational medicine, O, G, No. 33, 1993.

[4]Article 17 of Executive Decree No. 93-120 dated 23 Dhu al-Qi'dah 1413 corresponding to May 15th, 1993, concerning the organization of occupational medicine, O, G, No. 33, 1993.

- Undertaking any medical examinations at the request of the employee[1].
- **Maternity Leave**: Female employees benefit from 14 weeks of maternity leave during pre- and post-natal periods. They can also benefit from additional facilities, such as paid leave for breastfeeding, according to the conditions specified in the internal regulations of the employing entity.

THE SECOND TOPIC : Newly Established Exceptional Leaves According to New Legal Provisions:

In addition to the statutory leaves discussed in the first section, we will cover in this section the exceptional leaves provided under new legal provisions. These include leaves for establishing an institution(business), leaves for self-employed contractors within the framework [2] of establishing an institution(business), delegation for union members and theirauthorized paid absences, and authorized paid absences for representatives in bodies and councils.

The first requirement: Law No. 22-16, which complements Law No. 90-11, includes enabling workers to benefit from leave to establish a business:

In the context of encouraging investment and developing the economic sector, by contributing to the creation of a large number of small and medium-sized economic enterprises, as well as what is called start-ups, the state has worked to provide as much legal framework as possible for these enterprises and to enable every individual to carry out commercial activities within the framework of investment institutions. This has been reflected in the contributions and assistance provided by the state in the field of developing start-ups and facilitating access to the world of institutional economy.Among the efforts made by the state, it has facilitated the establishment of enterprises within the framework of investment, even for employees and workers. This is achieved by adding another exceptional leave that allows workers to benefit from unpaid leave for a year, renewable for up to six (6) months, without losing their job position. Thus, we have addressed this specific topic of the exceptional leave introduced under Law No. 22-16 dated July 20th, 2022, which amends Law No. 90-11 dated April 21st, 1990, concerning labour relations (published in Official Gazette No. 49 forthe year 2022). This law includes adding a new case

[1]Article 18 of Executive Decree No. 93-120 dated 23 Dhu al-Qi'dah 1413 corresponding to May 15th, 1993, concerning the organization of occupational medicine, O, G, No. 33, 1993.

[2] Al-Bashir, My Brief Goal in Explaining the Labor Law (Individual and Collective Labor Relations), Dar Jusoor for Publishing and Distribution, Second Edition, 2009, p. 134.

of suspension of the employment relationship, represented by the exceptional leave requested by the employee to establish an enterprise.

In addition to Law No. 22-23dated December 18th, 2022, which includes the basic law for the self-employed contractor (published in Official Gazette No. 85 for the year 2022), in the context of encouraging the establishment of institutions that are considered sources of economic wealth and due to their contribution to job creation, these institutions (businesses) have become a focus of public authorities. They have gained significant importance due to their rapid development and growth and their ability to transform globalization into technology and innovations. Recognizing the challenges and issues related to the establishment and development of technology companies, the Algerian government has made significant efforts to reduce administrative constraints and financial difficulties for these companies. Among these facilitative measures initiated by the Algerian state is the introduction of a new exceptional leave under Law No. 22-16 dated July 20th, 2022, which amends Law No. 90-11dated April 21st, 1990.

FIRSTLY: The Legal Framework for Exceptional Leave to Establish a Business

The Algerian legislator added 07 articles in this section under Law No. 22-16. Article 01 of this law states that employeesare entitled to benefit once during their professional career from unpaid leave to establish a business. Additionally, an employee has the right to opt for part-time work to establish a business, in accordance with the applicable legislation and regulations.

1- The objective of introducing the leave and Duration Specification :

A- **The objective of introducing the leave:** The law limits the benefit of the exceptional leave to a specific goal, which is the establishment of a business by any employee, without specifying the type of business or field. This is outlined in Article 56 bis of this law.

B- **Duration Specification :**The legislator set the duration of the leave or part-time work to one year at most as a general rule, and it can be granted only once during the employee's professional career. However, the leave or part-time work for establishing a business can be extended for up to six (6) months based on a justification from the concerned employee. Additionally, the employer, for operational needs, can decide to postpone the start date of the employee's leave or part-time work for business establishment for up to six (6) months, after consulting the participation committee, if the employee's absence would have significant adverse effects on the institution. The legislator did not specify the

procedures for benefiting from the leave and left this to be determined by regulations.

SECONDLY: Effects of the Employment Relationship duringthe Exceptional Leave:

1- **Suspension of the employment relationship:** The legislator considered this leave for establishing a business as a case of suspension of the employment relationship and added it to Article 64 of Law No. 90-11related to labor relations.

A- Impact on salary and rights: When anemployee is on leave to establish a business, their salary is suspended, and they do not benefit from rights related to seniority and promotion. However, the employeeretains their acquired rights related to their position at the time they are granted the leave to establish a business, according to the provisions of Article 56 bis 3 of the same law.

B- Benefiting from social security coverage: The leave period includes benefiting from social security coverage, according to the procedures specified by regulations, as outlined in Article 56 bis 3, paragraph 3.

2- <u>The benefits granted to an employee for establishing a business:</u>

In order to ensure the sustainability and continuity of projects and the expansion of activities, the state has granted employees the right to benefit from the privileges and subsidies provided within the framework of public mechanisms. This is stipulated in Article 56 bis6 “An employee can benefit from the privileges and subsidies provided within the framework of public mechanisms for creating and expanding activities, in accordance with the applicable legislation and regulations.”

A- Reintegration of the employee into their original position in case of failure of their business project:

If the employee fails to establish their business project and it results in failure, this does not lead to the loss of their job. Instead, they can return to it and be reinstated in their original position upon their request, at least one month before the expiration of the legal leave period. This is automatically enforced by law at the end of the leave period, with the employee retaining all their acquired rights as of the date of their leave. This is in accordance with Article 56 bis 4 of Law 22-16, which states: "In case the employee does not complete their project within the specified deadlines, they can request to be reinstated in their job or to be reemployed on a full-time basis, at least one (1) month before the end of the leave period or the part-time work period for establishing a business."

The employees retain the rights they had when benefiting from the leave to establish a business**.**

B- Termination of Employment Relationship in Case of Success of the Business Project:

Article 56 bis 5 of Law 22-16states: "Without prejudice to the applicable legislative and regulatory provisions, the employment relationship ends if the employee successfully establishes their business, and if necessary, if they do not submit a request for reinstatement within the deadlines specified in Article 56 bis 4 above. This means that if the employee succeeds in setting up their business, the employment relationship will necessarily end after the legal leave period expires, or if they do not request reinstatement in their job at least one month before theend of the leave. This case is added to the other cases of termination of service specified in Article 66 of Law 90-11.

The Second requirement: Paid Leaves According to the New Legal Texts:

FIRSTLY: Paid Absences for Representation at Public Bodies and Councils:

According to the joint ministerial instruction dated 11 Rabi' al-Awwal 1445, corresponding to September 27th, 2023, concerning paid absences for representation in public bodies and councils, which aims to enhance transparency, democratic participation, and governance, through involvement in advisory councils, providing suggestions and recommendations to help prevent and resolve conflicts, and assisting authorities in making the right decision on public issues with social and economic dimensions.

Accordingly, this instruction has been issued, which defines the legal system and specifies the procedures and practical measures related to paid special absences for wage workers,employees, and contracted staff working in public institutions and administrations, who have been appointed or elected to constitutional or public advisory bodies and councils. Theseprimarily include:

- Councils, committees, organizations, or constitutional bodies, and in general, any other body, regardless of its legal nature, that contributes to the decision-making process according to legislative and regulatory provisions.

1- The Legal Framework for Leaves

As a general rule, according to legislative provisions on labour, "work for pay" pursuant to Article 53 of Law 90-11dated 26 Ramadan, corresponding to April 21st, 1990, relating to labour relations, as amended and supplemented, employees cannot receive wages for periods in which they did not work. However, exceptions are made if stipulated by a legal or regulatory text.

Notably, Article 46 of the aforementioned Law 90-11states that absences authorized by the employing authority are considered as actual working time.

2- The Duration of Authorized Paid Special absences

The duration of authorized paid absence includes the necessary time for actual participation in various activities of bodies, consultations, seminars, deliberations, training sessions, and forums, generally all legal activities organized by bodies and councils. The absence period can also be extended if necessary, provided that the employing authority is informed.

3- The effects of authorized paid absences

The authorized absence of the non-delegated member of the aforementioned bodies and councils results in:

a- retaining all rights associated with their job position in their employing organization.

b- maintaining wages for employees.

c- retaining the right to all paid leaves.

d- maintaining all other social benefits.

e- Regarding travel, accommodation, and meal expenses incurred during the exercise of their duties with the aforementioned bodies and councils, those bodies and councils are responsible for covering these expenses.

SECONDLY: Absences and exceptional leaves for the assignment of union members:

1- Exceptional leaves for the assignment of union members.

The law grants a union member the right to assignment according to Executive Decree 23-360dated 2 Rabi' al-Thani 1445, corresponding to October 17th, 2023, which defines the procedures for assignment to carry out an elected mandate and to benefit from absence leave and union training leave in public institutions and administrations.

A- Conditions for granting assignment: The assignment is granted to the union member at the level of the representative union organization or union council, provided that the following conditions are met:

- seniority of at least two years at the institution.
- not subject to disciplinary penalties of the fourth degree.
- no judicial criminal verdict has been issued against them that conflicts with their duties as a union member, according to the provisions of Article 5of Executive Decree 23-360dated 2 Rabi' al-Thani 1445, corresponding to October 17th, 2023, which defines the procedures for assignment to

carry out an elected mandate and to benefit from absence leave and union training leave in public institutions and administrations.

B- Assignment Procedures: According to Articles 4, 6, 7, 8, and 9 of Executive Decree 23-360 dated 2 Rabi' al-Thani 1445, corresponding to October 17th, 2023, which defines the procedures for assignment to carry out an elected mandate and to benefit from absence leave and union training leave in public institutions and administrations:

- The assignment request must be submitted by the union organization or union council to the employing authority, which must respond to the request within a maximum period of thirty (30) days from the date of
- receipt of the request.
- In the event of no response, a grievance may be filed with the Minister in charge within fifteen (15) working days.
- The status of the secondment is determined by a decision of the relevant body specifying the number of employees in accordance with the union mandate. As for contractors, it is for the duration of the work contract. The secondment decision is signed by the competent authority and a copy is sent to the responsible authority and a copy to the union organization in accordance with the applicable regulations.

C - Effects of the secondment of the union member:

The seconded union member receives a salary from the union organization that is at least equal to the salary of his position. Article 10 of Executive Decree 360-23 dated 2 Rabi` al-Thani 1445 corresponding to October 17, 2023, which specifies the methods of secondment to exercise an elective mandate and benefit from leave of absence and union training leave in institutions and public administrations.

The seconded union member benefits from Seniority, promotion and retirement in accordance with the provisions of its basic law Article 11 of Executive Decree 360-23 dated 2 Rabi` al-Thani 1445 corresponding to October 17, 2023, determining the methods of delegation to exercise an electoral mandate and benefit from leave of absence and union training leave in public institutions and administrations. - He carries out his duties in accordance with the basic law and the internal regulations of the union organization.

D- Expiry of the mandate period: It expires upon the submission of a request by the member, provided that it is submitted at least two months before the end of the mandate. This is what is stated in Article 13 of Executive Decree 360-23 dated 2 Rabi` al-Thani 1445 corresponding to October 17, 2023, which specifies the methods of delegation to exercise an electoral mandate and benefit from leave of absence and leave of

Union formation in public institutions and administrations

- In the event that the member fails to fulfill his professional obligations specified by the representative union organization
- The member commits a serious professional error
- The member is subject to criminal prosecution

Suspension of the trade union organization's activity, dissolution or change of its leadership. This is what Article 13 of Executive Decree 360-23 dated 2 Rabi' al-Thani 1445 corresponding to 17 October 2023, which determines the methods of delegation to exercise an electoral mandate and benefit from absence permits and union training leave in public institutions and administrations

. Reintegration of the union member into his job position upon expiry of the secondment period Article 14 of Executive Decree 360-23 dated 2 Rabi' al-Thani 1445 corresponding to October 17, 2023, determining the methods of secondment to exercise an electoral term and benefit from absence permits and union training leave in public institutions and administrations.

2- Paid absences for participation in union activities The union member benefits: from a paid absence to carry out union activities, provided that justifications for this are provided in accordance with the content of Article 15 of Executive Decree 360-23 dated 2 Rabi' al-Thani 1445 corresponding to October 17, 2023, determining the methods of secondment to exercise an electoral term and benefit from absence permits and union training leave in public institutions and administrations, provided that the period does not exceed five (5) days during the year One and extended by fifteen (15) days in the case of meetings and conferences of the leadership bodies and by submitting a request to the employing body which responds to it at least eight (8) working days before the start of the activity .

Paid holidays for union training. The union training holiday is granted to participate in training courses for the purpose of acquiring knowledge in the

fields of union rights, labor law, and in the economic and social fields, on the basis of training programs proposed by the accredited training bodies concerned, and approved by the competent departments of the ministry in charge of labor .

- The training shall be for a period of fifteen (15) days. The representative trade union organization must submit a written request to the employing body at least thirty (30) working days before the start of the trade union training. The request must include the titles and names of the concerned trade union delegates, the date and duration of the training, and the name of the concerned training body. - The request shall be studied and decided by the employing body within five (5) days. In the event of rejection, a grievance shall be submitted to the minister concerned with the sector within 10 days.
- Participation may be postponed by the employing body. The trade union member shall also be obligated to submit a copy of the certificate of participation in the training to the employing body.

Conclusion:

In conclusion, the Algerian legislator has embodied the legal protection of annual holidays and weekly rest, and enabled the worker to have paid and authorized absences and others that are unpaid as an exception to the rules. The general rule that the worker does not benefit from wages except in exchange for the work performed, but according to the laws and regulations In addition to the legal holidays and absences authorized by the legislator under the new laws in order to ensure the effective contribution of workers in various economic and participatory activities and to contribute to making decisions regarding general economic and social issues, and to contribute to ensuring the stability of the social atmosphere, in accordance with legal controls that specify the necessary procedures and measures to ensure that workers benefit. They have the right to rest and holidays, while ensuring the stability and proper functioning of institutions.

BIbiography list setting :

Legal texts :

1- Law No. 63-278 dated July 26th, 1963, concerning the list of legal holidays, O, G, No. 53 issued on August 2nd, 1963, as amended and supplemented by Ordinance No. 66-153 dated June 13th, 1966, O, G, No. 52 issued on June 17th, 1966, as amended and supplemented by Ordinance No. 68-419 dated June 26th, 1968, O, G, No. 56 issued on July 12th, 1968, as amended and

supplemented by Law No. 05-06 dated April 26th, O, G, No. 30 issued on April 27th, 2005, as amended and supplemented by Law No. 18-12 dated July 2nd, 2018, O, G, No. 46 issued on July 29th, 2018.

2- - Law No. 08-81, dated June 27, 1981, concerning annual leave, published in Official Gazette No. 26 on June 30, 1981, has been repealed

3- Law No. 11-83, dated July 2, 1983, concerning social security (Official Gazette No. 16, Volume 28, published on July 15, 1983), amended and supplemented by Decree No. 28-84, dated February 11, 1984, which specifies the application procedures for Title II of Law No. 11-83 concerning social security (Official Gazette No. 07, published on August 14, 1984), and further amended and supplemented by Decree No. 88-09, dated19 October, 1988 (Official Gazette

No. 42, published on October 19)."

3- Law No. 88-07 dated Jumada II1408 corresponding to January 26th, 1988, concerning health prevention, safety, and occupational medicine

4- Law No. 90-11, dated April 21, 1990, concerning labour relations, published in Official Gazette No. 17 on April 26, 1990, as amended and supplemented by: law No. 29-91, dated December 21, 1991, published in Official Gazette No. 68 on December 25, 1991.

5- Law No. 17-11 dated December 27th, 2017, which includes the Finance Law for the year 2018, O, G, No. 76, issued on December 28th , 2017.

6- decree No96-21, dated June 9, 1996, published in Official Gazette No. 43 on July 16, 1996, decree No. 02/97, dated January 11, 1997, published in Official Gazette No. 3 on January 12, 1997.

7- Executive Decree No. 45-97 dated February 4, 1997, Establishing the National Fund for Compensation for Paid Leave and Unemployment Due to Adverse Weather Conditions in the Construction, Public Works, and Irrigation Sectors, Official Gazette No. 8, published on February 5, 1997.

8- Executive Decree No. 97-46 dated February 4th, 1997, determines the percentages of contributions payable to the National Fund for Compensation of Paid Leave and Bad Weather Unemployment in building, public works and hydraulic sectors, under the title of paid leave and bad weather unemployment, O, G, No. 8, issued on February 5th, 1997.

9- Executive Decree No. 48-97 dated February 4, 1997, which Defines the List of Professions, Branches, and Sectors Subject to Paid Leave, Official Gazette No. 8, published on February 5, 1997.

10- Executive Decree No. 360-23 dated Rabi' al-Thani 2, 1445 (October 17, 2023), which defines the procedures for deputation to hold a union position and for benefiting from leave and union training leave in public institutions and administrations

11- Executive Decree No. 120-93 dated Dhu al-Qi'dah 23, 1413 (May 15, 1993), concerning the organization of occupational medicine, published in Official Gazette No. 33 for the year 1993.

Books :

12- Rashid Wahid, Labor Relations (in Light of Economic Reforms in Algeria), Homel Publishing and Distribution House, 2005 edition **.**

13- Al-Bashir, My Brief Goal in Explaining the Labor Law (Individual and Collective Labor Relations), Dar Jusoor for Publishing and Distribution, Second Edition, 2009.

Mimory :

14- Ould Sbiman Hamid, the vacation system within the framework of the Algerian legislative system, a case study of the Trade Directorate of Tzi Ouzou State, a memorandum submitted to complete the requirements for obtaining a master's degree in political science, Mouloud Mammeri University, academic year 2019/2020.

articles:

15- BouazizLinda. "Paid Annual Leave in Algerian Labour Law." *Journal of Advanced Legal Studies*, Issue 35, Year 2019.