New Extraordinary Leave

Introduction

This summer, the Chamber of Deputies voted for a bill to implement Directive (EU) 2019/1158 on work-life balance for parents and carers. This Act of 15 August 2023 introduces two types of new extraordinary leave in addition to the existing ones (wedding, moving, death, birth): the **carer's leave** to provide personal care to a close relative and the leave that grants **the right to be absent from work on account of force majeure** for urgent and unforeseen family reasons.

Employees are to retain their full salary during such extraordinary leave. However, 50% of the wages paid by the employer for such leave will be borne by the state budget.

1) What are the eligibility criteria?

Any individual under an **employment contract** governed by the Labour Code may be eligible for such extraordinary leave.

Like other types of extraordinary leave, employees can benefit therefrom **as of the time they start working** in a company. There is no need to observe the 3-month waiting period as required by legal leave.

The **leave for force majeure** shall be granted to employees if reasons of force majeure relating to urgent family matters due to illness or accidents that require their immediate presence should arise.

The **carer's leave**, on the other hand, shall be granted to the employee *to provide personal care or assistance to a **family member** or a **person living in the same household** as the employee, **who requires substantial care or assistance due to a serious medical condition** that impairs their capacity and autonomy, rendering the family member or the person incapable of autonomously compensating for or coping with physical, cognitive, or psychological impairments or health-related constraints or requirements, as **attested by a doctor***. Family members shall in this context include a son, daughter, mother, father, spouse, or partner.

2) What are the procedures for the employee?

Employees who believes they are eligible for either of these types of leave must notify their employer or a representative of the latter personally or through a third party, orally or in writing, **on the same day as the absence at the latest.** Without such notification, the absence may be considered unjustified and, therefore, not paid.

- **For leave for reasons of force majeure**

The employee requesting leave for force majeure is **not required to provide justification.** The employer cannot check whether the leave is justified and must consequently rely on the good faith of the employee. Nevertheless, it is in every employee's interest to keep this leave day in case of a real emergency.

- **For carer's leave**

Conversely, for carer's leave, the employee must provide the employer, at the latest on the third day of the absence, with:

- a **medical certificate** attesting that the legal conditions for this leave are met; **and**
- a **document proving the family relationship** with the person in need or that they live under the same roof.

A standard medical certificate will be prepared presently by the Ministry of Labor, Employment, and Economy.

3) How long are these types of leave for?

The **leave for force majeure** is **an extraordinary leave of 1 day,** while the **carer's leave is an extraordinary leave of 5 days, both granted** over a 12-month employment (rolling) period. The Act of 15 August 2023 stipulates that these two new extraordinary leave days can be **broken down into whole hours.**

In other words, a full-time employee is entitled to **8 hours out of 40 hours** for each extraordinary leave. In the case of part-time employment or if the employee has several employers, these leave hours shall be determined **in proportion to the working time specified in the employment contract concerned.** An employee working 20 hours per week is entitled to 4 hours of leave for force majeure over a 12-month period and 20 hours for carer's leave.

The new law does not however specify that this is a 12-month period with the same employer. It should therefore be considered a 12-month affiliation period in Luxembourg as an employee. This employment period serves as a **reference period** during which employees are entitled to 8 hours out of 40 hours of extraordinary leave if they work full-time. Note that in case of periods of inactivity, the reference period shall be suspended and extended by a period equal to that of inactivity.

This reference period starts on **the day of the first use of such leave** by the employee and ends after 12 months of employment. At the end of these 12 months, whether or not the employees have exhausted their leave entitlement, the hour counter is reset, and a new period of employment starts which generates a new leave as of the next request. In other words, **employees cannot accumulate unused hours,** and they forfeit them automatically when a new entitlement to extraordinary leave is established.

In concrete terms, this means that the employer faced with a request for carer's leave or leave for force majeure must check systematically whether their employee has already used such leave in the past 12 months and to what extent.

The employer can inquire with the Ministry of Labor (conges.extraordinaires@mt.etat.lu) to find out whether employees have already used their leave, and if so, whether they have exhausted their rights for the current reference period. This verification with the ministry will prove particularly useful for an employee who has recently joined your company. If the ministry's response comes after the leave has been taken, incorrect information provided to employees about their leave entitlement can lead to a recalculation of their salary. In such a case, the hours shall be considered as an unjustified absence and, therefore, not paid unless they are converted into paid annual leave hours.

Examples to illustrate the aforementioned rules:

Example 1: An employee who works full-time takes 8 hours of carer's leave on 18 September 2023, 16 hours on 5 and 6 January 2024, 2 hours on 18 February 2024, and the remaining 14 hours on 18 and 19 March 2024. In this case, the entitlement to a new 40-hour carer's leave will commence at the earliest on 18 September 2024.

If the same employees had taken only 20 hours their carer's leave during the period from 18 September 2023, to 17 September 2024, they would lose the remaining 20 hours. A new entitlement to 40 hours of carer's leave will be available to them as of 18 September 2024.

Example 2: An employee works 20 hours per week for two employers (40 hours in total). He or she can claim 4 hours of leave for force majeure and 20 hours of carer's leave with each of them.

Example 3: An employee works 20 hours per week for one employer and takes carer's leave in October 2023, then resigns and starts working for a new employer in March 2024 with the same working hours. He or she will have to wait until October 2024 to be eligible for a new leave with their new employer. Before October 2024, the new employer will have to refuse the leave.

Example 4: An employee works 20 hours per week for one employer and takes carer's leave in October 2023, then resigns and starts working for a new employer in March 2024, for which he or she will work 30 hours per week. He or she is therefore entitled to an additional 10 hours of carer's leave before October 2024 and can, as of that date, take carer's leave again, which will be 30 hours this time.

Example 5: An employee used 4 hours of leave for force majeure on 15 September 2023, with employer A. He or she is unemployed during December 2023 and January 2024 and finds full-time employment with employer B as of February 2024. The employee can take the remaining 4 hours of leave for force majeure until 14 November 2024 (12 months after the first request + 2 months of unemployment). The entitlement to a new 8-hour force majeure leave will commence at the earliest as of 15 November 2024.

Example 6: An employee has used 40 hours of carer's leave in October 2023 with his or her employer. He or she resigns and starts a new job in February 2024 with a new employer. He or she will have to wait until October 2024 to request a new carer's leave with the new employer.

4) Who bears the cost of these types of leave?

For carer's leave as well as for leave for force majeure, **50% of the salaries paid by the employer during these types of leave are funded by the state.**

The elements taken into account to calculate the amount to be reimbursed by the Minister for Labour are the base salary declared by the employer to the Common Social Security Centre, which is increased by the employer's social security contributions for the period of the leave taken. The base salary used to calculate the reimbursement is limited to five times the minimum social wage for unskilled employees. If the employee works part-time, the limit is adjusted accordingly.

To be eligible, the employer must send a **reimbursement request** to the Ministry of Labour, Employment, and the Social and Solidarity Economy via MyGuichet.lu **within 6 months** as of the date of the leave is taken or the last day of leave if the employee takes it for multiple days in a row (in full days or split into hours, for example), along with supporting documents, including:

- A **certificate of affiliation** with the Common Social Security Center for the employee. https://ccss.public.lu/fr/commandes-certificats/particuliers/commande-certificat-affiliation/commande-certificat-affiliation.html ;

- **Payslips** relating to the period of carer's leave/leave for force majeure and the month preceding the leave;

- For carer's leave, in the case of a person living in the same household without a family relationship with the employee: the employee's extended **residence certificate.**

Requests not submitted via MyGuichet.lu shall be accepted only if the employer can prove that they did not have access to this means of submission. In such cases, these requests should be sent to the Ministry of Labour, Employment, and the Social and Solidarity Economy on plain paper along with the listed supporting documents. They must include essential information about the company and the employee.

In conclusion

The **employment contract is maintained** for the entire duration of these types of leave, and the employer is not allowed to initiate a termination procedure on the grounds that the employee has requested or has actually taken one of these types of leave. The termination of the employment contract made in violation of these provisions shall be null and void.

Here, the legislator wanted to provide employees with family responsibilities more opportunities to stay in the workforce while having time to care for their loved ones for medical reasons.

In practice, however, managing these types of leave and the eligibility for them can be complex when an employee works part-time, has multiple employers, or changes employers during the reference period.