

# Accumulation of Leave Days and Unpaid Leave for Caregiving Workers

- ☒ The Annual Leave Law, 5711-1951 (hereinafter – the Law), stipulates that every worker is entitled to paid leave. The number of days they are entitled to depends on the duration of the worker's service with the employer. The number of leave days stipulated by the Law includes the weekly rest days.
- ☒ During the first 5 years of employment, every worker is entitled to 16 leave days (gross) of which 14 are paid leave days.
- ☒ The Law allows workers to accrue up to 7 leave days per year, for a period not exceeding 3 years. The employer is required to allow the worker in practice to take advantage of such leave days, and to alert the worker that if he does not do so those leave days would be forfeited after 3 years of employment.
- ☒ The dates on which the worker goes on leave must be coordinated between the parties, and the leave cannot be made conditional upon finding a replacement. The employer is prohibited from requiring a worker to go on their annual leave on account of leave days which have not yet been accrued by the worker, except with the worker's consent.
- ☒ The 'homeland vacation', as it is called by foreign workers, is typically comprised of two periods: one on account of accumulated leave day (even if they have been paid for, without their being actually used), and the other an unpaid leave, all depending upon the worker's leave days balance at the time of the homeland vacation.

Foreign workers in general, and particularly in the nursing sector, prefer to accumulate the leave days credited to them and to use them for a long 'homeland vacation', inter alia due to the cost of the flight to the country of origin, and in order to stay with their families for as long as possible. At the same time, there is a common practice in the nursing sector, where leave days are redeemed on an annual basis, before the termination of employment, and where the worker receives a payment, which with the addition of recuperation pay has become known (erroneously) as a 'bonus'. This practice is intended to solve a momentary financial problem on the one hand, and also to prevent workers who do not use their leave days from losing the payment for such days, on the other hand.

It should be noted that this practice is in contravention of the Law, as the purpose of the Law is to impose restrictions upon the parties (the worker and the employer), so that the worker exercises his right to an actual leave and does not convert it to its value in money. An employer who redeems a worker's leave days risks having to pay a double amount, as he may be exposed to the worker claiming additional payment for leave days which he is entitled to actually use, and are redeemed by the employer [1].

Where the worker goes on leave for a duration exceeding the number of leave days accumulated by him, such excess actually constitutes unpaid leave. The significance of an unpaid leave is that this period is not taken into account in the calculation of the duration of the worker's service with the employer, for the purposes of the calculation of benefits and rights depending upon such duration of service, such as: recuperation pay, sick days, annual leave, etc. Please note that not all the homeland vacation can be treated as unpaid leave, as at least part of it uses unused leave days accrued to the worker.

#### We should clarify that:

In practice, typically the homeland vacation is comprised of two periods – leave on account of accumulated leave days, and a period during which the worker is on unpaid leave. If the employer pays in advance for leave days accrued to the worker (hereinafter – Accrued Days), payment which is referred to as 'redemption' and which is in contravention of the Law, as aforementioned, the Accrued Days cannot be reduced from the total duration of service accrued to the worker in his employment.

In other words – not all the days of the foreign worker's homeland vacation can be taken into account as unpaid leave – only the days exceeding the entitlement quota of leave days actually accumulated by the worker can be taken into account. In addition, the leave days accumulated by the worker are included in the total duration of service of the worker with his employer for the purposes of accrual of social benefits and rights.

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[1] Labor Appeal 1144/04 Avraham Marhiv v. Moked Emun Savion (1981) Ltd., dated 21.12.06; Appeal Against Fast-Track Judgment 13/07 Eliran Aslati v Kfir Security and Electronic Protection Ltd., dated 29.10.08.

## Example:

Annabelle is a caregiver who has been employed by Baruch since 1.1.2020 – for approximately 2 years. During these two years, Annabelle has not used the leave days to which she was entitled: 16 leave days (gross), of which 14 days were to be paid for, for the first year of employment, and 16 leave days (gross), of which 14 days were to be paid for, for the second year of employment. At the end of Anna's first year of employment, Baruch redeemed the 14 leave days accumulated by Anna during the first year of employment, and paid Anna, for these days, what he referred to as a 'bonus'. One year later, in January 2022, Annabelle requests to go on a long vacation in her country of origin, for a period of 6 weeks, and her employer, Baruch, approves such vacation. Baruch will be required to pay Annabelle wage for 14 leave days only (as he had already paid for the first 14 leave days, at the beginning of 2021). Upon returning from her homeland vacation, Baruch decides to dismiss Annabelle.

Now, Baruch must calculate Annabelle's duration of service for the purposes of payment of severance pay:

According to Baruch's calculation, Annabelle has only 14 leave days, as he had redeemed the leave days to which Annabelle was entitled during the first year of her employment, and therefore the duration of her service stopped in mid-January, in his view. Baruch treats the remainder of her vacation as 'unpaid leave', a period which is not taken into account in the duration of service. **This calculation is incorrect.**

### The correct calculation is as follows:

In total, Annabelle is entitled to 32 leave days (as aforementioned), which also include the weekends, even though they are not paid for. The payment for leave days redemption, for the first year of her employment, does not reduce the number of leave days to which Annabelle is entitled for the purposes of the duration of her service. In the calculation made for the settlement of accounts between Baruch and Annabelle upon termination of employment, Baruch may deduct the amount he had paid to Annabelle in the redemption of the leave days. However, he must take into account all the leave days to which Annabelle is entitled (the 28 leave days for which he had paid, with the addition of the four leave days which fell on weekends, and for which he was not required to pay) for the purposes of the calculation of the duration of her service. This means that Annabelle was actually on unpaid leave only during two weeks out of her 6 week vacation, so that the duration of her service is from 1.1.2020 until 1.2.2022, and all the worker's rights and benefits will be derived from this period.

It should be clarified – the intention is not to pay double for the worker's leave; the foregoing is only for the purposes of accumulation of days for the calculation of the duration of service with the employer.