

18/08/2023

Work-life balance: new extraordinary leave and flexible working arrangements

The Laws of 29 July 2023 and 15 August 2023 transposing EU Directive 2019/1158 of 20 June 2019, whose purpose is to ensure a work-life balance for parents and carers, have been published respectively in Mémorial A n°524 of 18 August 2023 and Mémorial A n°512 of 17 August 2023.

The main modifications are as follows:

1. New extraordinary leave

Employees will now be able to benefit from two new types of extraordinary leave:

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“Leave for force majeure”: 1 day over a 12-month period on grounds of force majeure for urgent family reasons in the case of illness or accident making the immediate attendance of the worker vital.

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“Carers' leave”: 5 days over a 12-month period to provide personal care or support to a relative, or to a person i) who lives in the same household as the employee, and ii) who is in need of significant care or support for a serious medical reason that prevent them from being self-sufficient, as certified by a doctor.

Obligations of the employee:

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notify personally or through an intermediary, orally or in writing, the employer or its representative no later than the day of the absence; and,

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for carer's leave only, submit a medical certificate to the employer by the third day of absence at the latest, certifying that the conditions have been met, as well as a document proving the family relationship or the consistency among the places of residence.

Key points for employers:

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The request for reimbursement to the State (50% of the wages paid in respect of this leave up to a maximum of 5 times the unqualified social minimum wage) is to be made under penalty of foreclosure within a deadline of 6 months.

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Termination of the employment contract on the grounds of a request for or benefit of extraordinary leave is null and void (all extraordinary leave is covered).

2. Paternity leave / second parent

An employee who is a second parent recognised as equivalent by the applicable national legislation will also be entitled **to 10 days in the event of the birth of a child**.

Key points for employers:

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Paternity leave / second parent leave and leave for the adoption of a child are limited to one leave per employee and per child, and cannot be cumulated.

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If the 2-month notice period for informing the employer of the foreseeable dates of paternity/second parent leave is not respected, the leave must be taken in one single period and immediately after the birth of the child, unless the employer and the employee agree on a flexible solution (postponement of the leave in full or in instalments).

3. New “flexible working arrangements”

Employees now have the opportunity to benefit from "flexible working arrangements" (e.g. teleworking, flexible working hours or reduced working hours) for a fixed period of up to 1 year.

Employees who fulfil the following conditions may apply:

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seniority of at least 6 months; and,
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be the parent of a child under the age of 9 or provide personal care or support to a family member or a person i) who lives in the same household as the employee, and who ii) is in need of significant care or support for a serious medical reason that prevent them from being self-sufficient (no medical certificate required).

Key points for employers:

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You have **one month** to examine and reply to the request.
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You must justify your refusal or postponement of the request by **registered letter with acknowledgement of receipt**.
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Termination of the employment contract on the grounds of the request or the benefit of a flexible working arrangement is null and void.
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You must keep the employee's job, or a similar job, during the period of flexible work arrangement.

Penalty for non-compliance with these obligations: a fine of between EUR 251 and EUR 2,500 (doubled in the event of a repeated offence within two years).

4. Parental leave changes

Key points for employers:

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You must now give reasons **by registered letter with acknowledgement of receipt** for your refusal to grant split parental leave (deadline of 2 weeks).
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You must give reasons, **by registered letter with acknowledgement of receipt**, for your decision to postpone the second parental leave to a later date, after having offered the employee "as far as possible" an alternative form of parental leave.

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