

SPECIAL LEAVES IN URUGUAY

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On September 23, 2008 was published Law No. 18345 in the Official Journal. This law gives workers in the private sector special leave with pay for several reasons: study, paternity, adoption, adoptive legitimation, marriage and bereavement. The rule was partially amended by Law No. 18,458 on aspects regarding the study leave, which was the license that had led to more questions. The rules look forward to reach an equalization of private with public employees.

Characteristics of the Law

1.1. Additional characters of these licenses

Special leave granted by the rule are minimum rights of workers and may not be deducted from the general licensing scheme. This means that you can enjoy over and leave, but not compute the days of special leave in the ordinary license. Also, while the worker enjoys the special license is generating days for annual leave.

1.2. Nature of the rules of inalienability

The rules provide the inalienability of the rights established. As a result, their standards are unavailable for those involved in the employment relationship. No covenant nor agreement which waives the licenses are valid, unless you "more favorable" agreements are reached.

1.3. No right to holiday pay

With regard to holiday pay, general rules mantein: the special licenses do not generate this kind of right to wages.

2. Subjective scope of standars

The new benefits reach all workers in the private sector without exceptions.

3. Objective scope of standards

Analysis of the different causes of license:

3.1 Study leave.

This license can cover 6, 9 or 12 days per calendar year¹.

A fragmented system can be established:

- a) for every 36 hours of work per week, 6 days of leave at least.
- b) for more than 36 hours of work per week to less than 48 hours, 9 days of leave as minimum.
- c) for more than 48 hours of work per week, 12 days per year.

The days of leave are run business or regular working days.

¹ This is the most important amendment of Law; the scheme of this leave was reduced from 18 days to a fragmented system.

What creates the right to this license is the fact of being a student and the limited days in the year may not be enjoyed during the next year. The days of leave will expire if not established within the benefit year.

The number of days an employee can ever ask for is a maximum of 3 working days for examination or review, evaluation, or similar.

The amended law includes within the requested days the days of the examination or assessment.

The law is silent on whether leave should be foreground or not. We believe that it should first be previously requested to be considered. This raises another question: what about the oral exams in which the actual date of the exam is not certain? We understand that the employer must deal with reasonableness and flexibility of this situation, in turn requiring the documentation which shows why it had not been taken the test.

Should be granted, provided that employees study in one of specific educational institutions².

3.1.1 License for training

The new rule provides for a similar approach to study leave for professional training courses, provided they are under collective agreements or agreements in the field of Wages Councils.

3.1.2 Conditions for granting the benefit.

There are two requirements that must be satisfied in each application so as to grant the leave by the employer:

- 1) the employee should have a minimum of 6 months in the job;
- 2) he must prove to be a student enrolled in a course, and must certify having approved at least one examination or course in the previous calendar year when requested in subsequent opportunities.

It is not clear how to determine the period of notice and if it must exist. We understand that it should exist. The deadline for it should be considered depending on the task that he performs and on the company's reality.

3.1.3 Penalties for breach of the requirements.

If the employee fails to submit the mentioned documents, the leave can be refused. If the employee only fails to submit documentation attesting having passed an examination or a course in the previous calendar year, the right to study leave is suspended in the following year that in which it had not complied with that condition. But this right is reset for the next year.

3.1.4 Setting the date of license.

² Institutes of Basic and Higher Secondary Education, Higher Vocational-Technical Education, University Education, Institute of Normal and other similar nature, public or private. These mentioned institutions should be empowered by the Ministry of Education and Culture.

On this issue, we must prioritize the planned approach to annual leave. It must result from an agreement between the employer and workers.

3.1.5 Documentation to be submitted by the employee after the enjoyment of the license.

Having enjoyed the leave, the employee must submit a certificate issued by the institute in which he studied, proving that he paid the consideration, review, assessment or similar. If no such certificate is presented, the employee automatically loses the right to request such leave within a year. Moreover, the employer is entitled to deduct monthly from the assets required, as in the case of absences without prior notice.

The law, in a clear omission did not provide the period in which to submit this documentation. For these cases, the general principle states a date of compliance of 10 days after the ordering has been forced to comply.

3.2 Paternity Leave.

The benefit will be one, even if it is a multiple birth. The license covers the day of birth and the next two days. If the birth occurs in a non-working day, we understand that the employer may enjoy the immediate following days, because the rule looks for a certain time (three days) the father may stay with their children.

The parent must provide supporting documentation of birth. If not, the employer may discount days not worked as if it were absences without prior notice.

3.3 Adoption leave and adoptive legitimation.

The law makes no reference to the adoption leave and adoptive legitimation in the body of the article, although it mentions it in the title. There is an inadvertent omission of the legislator.

We understand that it is reasonable to give the same advantage of paternity leave to adoptive parents and the adoptive father-legitimante on the day that takes place the adoption or the adoptive legitimation.

For cases of members of the “Banco de Previsión Social”, Law No. 17292 provides that any employee who receives one or more children entitled to special leave of six weeks' duration. This license shall run from the handing over of the child.

3.4. Marriage license.

Workers have the right to hold a license for three days because of their marriage. They must meet certain requirements to apply:

- 1) One of the three days must coincide with the date of marriage.
- 2) The employee must make a reliable warning to the employer within thirty days prior to the date of marriage. But provides an exception: this period may be reduced when, for reasons of force majeure, duly accredited, the employee couldn't advice warn by that time.

Having enjoyed the license will have thirty days to prove the date of marriage. You can do it with the marriage book.

If it is not accredited, the employer can discount the assets for the days not worked as if it they were absences without prior notice.

3.5 Bereavement leave.

Workers have the right to hold a license for three days because of the death of the father or mother or children or the adoptive parents, and siblings or cohabitants.

This is the only one that refers to working days. It says that one of them should correspond to the date of death, which may allow different cases (eg., burial in another province).

Having enjoyed the license will have thirty days to prove the death of a relative. If no documentation, the employer can deduct the assets for the days not worked.

The concubinage relationship must be established, as set out in Article 4 of Law 18,246, through the certificate of the ruling that recognizes it.

4. Mode of payment of these licenses

Licenses are with pay and it generates annual license.

5. Event of dismissal or renounce.

Given this eventuality, we understand that there is no entitlement to payment of "special leave not enjoyed" in licenses to be made a notice (marriage license), because the purpose of the rule is to grant licenses to certain circumstances.

It would be an abuse claim to recover a benefit when the cause of it has not occurred. These benefits presuppose an existing working relationship; if not, employees can enjoy the days of study, paternity, adoption, adoptive legitimation, marriage and bereavement without any problem.