

VACATION LEAVE IN PERU: MAIN CONSIDERATIONS



In accordance with Peruvian legislation, the Annual Vacation Leave is an employment benefit which allows employees on payroll to make use of 30 uninterrupted calendar days of paid leave, provided that they have accrued the required number of vacation days and have completed 1 year of services.

In case an employee does not opportunely enforce this right, such employee will be entitled to an indemnity called "Triple Vacation Pay", which is composed as follows:

- The payment of 1 month's salary for the month worked.
- The payment for the vacation days accrued but not used (equivalent to 1 month of work).
- The payment of an indemnity equivalent to the vacation days accrued but not used (equivalent to 1 month of work).

WAYS TO USE VACATION DAYS

The general rule states that vacation days must be used uninterruptedly. However, some exceptions are admitted concerning this right, which disregard the requirement to make use of an uninterrupted vacation period. Said exceptions allow reducing, advancing, or splitting vacation periods provided that specific parameters and requirements are met.

I. SPLITTING OF ANNUAL VACATIONAL LEAVE

It refers to the right granted to employees to split or prorate their annual vacation leave in periods of less than 30 calendar days, provided that they have accrued the required number of vacation days and have completed 1 year of services.

Upon prior agreement with the employer, employees may split their vacation periods in the manner and order below:

- ▶ A period of at least 15 calendar days, which can be used uninterruptedly or be split into 2 periods:
 - A period of at least 7 uninterrupted calendar days.
 - A period of at least 8 uninterrupted calendar days.
- ▶ The remaining period may be used in minimum periods of 1 calendar day.

II. REDUCTION OF ANNUAL VACATION LEAVE

It refers to the reduction of the Annual Vacation Leave from 30 to 15 calendar days, which entitles the employee to receive the remuneration corresponding to the 15-day period sold.

For such purpose, this reduction can only be applied to the vacation period that can be split in periods of even less than 7 calendar days.

In that sense, after entering into and executing an agreement to reduce the vacation period, the employer is required to make the following payments with respect to the 15-day period being reduced or sold:

- ▶ A payment corresponding to 15-days' salary for the sale of the vacation period.
- ▶ A payment corresponding to 15-days' salary for the work performed during the vacation days sold. This payment corresponds to the compensation set out in Article 19 of Legislative Decree No. 713.

With respect to the unsold vacation period, the employer must pay the vacation pay corresponding to this period to the employee, when such employee makes use of the unsold 15-day vacation period.

III. ADVANCE OF ANNUAL VACATIONAL LEAVE

It refers to the use of vacation days in advance on account of the vacation days to be accrued in the future; i.e., before accruing the required number of vacation days and completing 1 year of services.

Such days may be used (in advance) in minimum periods of 1 day and even in periods longer than 30 calendar days.

The vacation days used in advance will be offset once the necessary number of vacation days have been accrued.

FORMALITIES REQUIRED

The use of vacation periods in the manners describe above required the execution of a written agreement between the employer and the employee, in order to prove that the right of employees to use their annual vacation leave uninterruptedly is not being affected by a unilateral decision due to an abuse of power by the employer.

In other words, it will be mandatorily required to formalize the will of employees to use vacation periods in any of the manners described above in a physical or digital supporting document.

ADDITIONAL INFORMATION

- ▶ The failure to comply with the formalities established for the recognition and use of the Annual Vacation Leave may give rise to infractions classified as very serious, and employers may be subject to penalties ranging from 2.63 and 52.53 tax units, based on the number of affected employees.
- ▶ The indemnity for not making use of the vacation leave opportunely is considered as an expense that complies with the causality principle (as it supposes the utilization by the employer of the services provided interruptedly by the employee, which confirms the relation between the expense and the activities of the entity earning business income); therefore, such expense will be tax deductible in the year when it is accrued.



FOR MORE INFORMATION:



CARINA DÁVILA
Legal Manager
Business Services & Outsourcing
cdavila@bdo.com.pe



CAROLINE MAYORIA
Legal Advisor
Business Services & Outsourcing
cmayoria@bdo.com.pe

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