

# ANNUAL LEAVE IN THAILAND

In the coming weeks, Thailand's workforce will enjoy numerous public holidays. As employees prepare to supplement their public holidays with annual leave, employers and employees alike are encouraged to review the laws surrounding personal vacation time in Thailand. This article addresses common mistakes concerning annual leave.

**Annual leave must be fixed by the employer in advance.** Under Section 30 of the Labour Protection Act (LPA), an employee who has worked continuously for one full year shall be entitled to annual leave of not less than six working days. The term "annual leave" refers only to personal vacation time.

The employer must fix the employee's annual leave in advance. The law does not require the employee's consent for the employer to do so. However, for the employee's convenience, it can be taken on certain dates as agreed by both parties.

If the employer does not fix annual leave for the employee, the employer is subject to a maximum criminal fine of 20,000 baht (LPA, Section 146). In addition, the employer is liable to pay holiday wages to the employee (LPA, Section 64). Therefore, even if the employee neglects to take a personal vacation, the employer must still pay wages for any unused days.

For instance, Somboon was entitled to 20 days of annual leave in 2010 but used only five days that year. As of Jan 1, 2011, Somboon has the right to claim wages for the 15 days of unused vacation time in 2010.

**Employees must be allowed to carry forward annual leave.** Section 30 of the LPA provides that an employer and employee may agree in advance that the annual leave will be postponed, accumulated and taken together with leave accrued in subsequent years.

The Supreme Court has ruled the employer is in violation of Section 30 if it indicates in its work rules that annual leave cannot be carried forward to following years. Therefore, despite any work rules to the contrary, the employee has the right to claim holiday wages for unused annual leave carried forward from previous years. In addition, the employer has no right to deduct or reduce such entitlement for any reason whatsoever.

Per Section 193/34 (9) of the Civil and Commercial Code, the employee must exercise his or her right to claim wages for unused annual leave within two years following his or her entitlement to such amounts. From the above example, Somboon must file his claim for holiday wages with the court by Jan 1, 2013.



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**Annual leave is calculated based on the length of employment.** Under Section 30 of the LPA, annual leave entitlement must be calculated in accordance with length of employment.

For example, XYZ Corporation's work rules indicate employees are entitled to 10 days of annual leave after completion of the first year of employment. Warunee started working on Jan 1, 2009. According to her company's work rules, she cannot take annual leave in 2009 but can in 2010. During the period of two years of employment, Warunee did not take any annual leave. She decided to quit her job effective Dec 31, 2010. In this case, XYZ Corporation must pay holiday wages to Warunee in an amount equivalent to her prorated salary for 20 days — 10 days for each year of employment.

**Personal business leave is not annual leave.** If an employee's child is sick and the employee must take leave to stay with the child, this is clearly not a vacation and cannot be classified as "annual leave". Section 34 of the LPA stipulates employees are entitled to take personal business leave as necessary in line with work regulations.

Personal business leave is different from annual leave and must be addressed separately in the work rules. The LPA, however, does not provide much guidance on personal business leave. This means an employer can freely stipulate the requirements for personal business leave in their work rules. The employer should establish the criteria, the number of days per year, the procedures for approval and whether employees are entitled to wages when taking personal business leave. After granting personal business leave, the employer cannot deduct such leave days from annual leave.

**Conclusion:** Annual leave is a common area of disagreement between employers and employees. If both sides correctly understand their rights and obligations, then disputes on annual leave can be easily resolved between the parties.

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