

Survey on Overtime and Paid Leave

Context

On 10 September 2025, the French Court of Cassation published two decisions with significant consequences for employers, namely for the hospitality sector:

- **Paid leave and sick leave:** Employees who fall ill during their holidays and duly notify their employer of their sick leave now have the right to reschedule their annual leave. Furthermore, periods of sick leave count towards the accrual of paid leave.

On this topic HOTREC launched a survey in October 2023. The results of the survey can be found [here](#).

- **Overtime and paid leave:** The Court ruled that paid leave must be considered as effective working time when calculating overtime. This means that week's including paid leave can exceed the 35-hour threshold, thereby generating overtime and additional pay.

HOTREC would like to know what is the legislation at national level in this respect.

According to our research, the French rulings align with the Working Time Directive and the case law of the CJEU. For example:

- The decision to allow rescheduling of leave that overlaps with sick leave is consistent with Article 7 of the Directive and related CJEU jurisprudence.
- Regarding overtime, the ruling reflects the CJEU's view that paid leave should not be treated as "lost" for threshold calculations triggering overtime.

However, we understand that Member States retain some discretion in defining the calculation methods – provided they do not undermine the right to annual leave.

Please see below the collection of replies.

Question 1 –In your country, does paid annual leave count as “working time” when calculating overtime? In other words, if an employee takes paid leave during a week, can this still contribute to exceeding the legal threshold for overtime pay? Please provide details of the applicable rules or practices.	
Association/Country	
Koninklijke Horeca Nederland/ The Netherlands	<p>No. In the Netherlands paid annual leave does not count as working time.</p> <p>Dutch law has few provisions regarding overtime. The collective labor agreement stipulates when overtime applies. This is the case if the employee has worked more than 1,976 hours on an annual basis. Whether overtime applies is therefore not determined on a weekly basis, but on an annual basis.</p>
APHORT/ Portugal	<p>In Portugal, paid annual leave does not count as working time for the purpose of calculating overtime. Only the hours of actual work performed are relevant to determine whether the legal threshold has been exceeded and, consequently, whether overtime pay is due.</p> <p>To the Portuguese law annual leave constitutes an autonomous right, suspending the obligation to perform work but without loss of remuneration.</p>
IHF/ Ireland	<p>Ireland has no statutory entitlement to overtime payment in general. Overtime is determined by contract, sectoral agreement or custom and practice. The Hotels Joint Labour Committee did impose an overtime rate, but it was struck down in 2011 as the mechanism for setting rates in the hotel sector, as unconstitutional. The sector now relies on the Organisation of Working Time Act (OWTA) which imposes limits on working hours (maximum week is 48 hours averaged over 6 months) and regulates rest breaks but it does not mandate an overtime allowance or premium. In fact, the OWTA explicitly excludes overtime from calculation of annual leave. In addition, the 48 hour maximum week excludes time spent on statutory leave, and so these leave periods, (sick leave, annual leave,</p>

	<p>maternity leave etc) are not treated as 'working time' but are treated as time in employment for accrual of rights and entitlements and annual leave continues to be accrued while on these protected leaves but it is not considered 'time worked' under the Act for working time calculations. Therefore, paid annual leave does not count toward 'hours worked' for the purpose of pushing someone over a legal overtime threshold as there is no statutory overtime threshold. However, there is an argument that if an employee has regular, predictable overtime then it may need to be included when calculating holiday pay but in general, leave is not working time for overtime purposes.</p>
FIHR/ Romania	<p>In Romania, according to the Labor Code (Law no. 53/2003, as amended): Annual leave is a guaranteed and paid right, but it is not considered actual work time. Therefore, the leave period is not taken into account when determining overtime. Overtime can only result from work actually performed beyond the normal duration of working time (8 hours/day and 40 hours/week, art. 112 and art. 114 Labor Code). If an employee has, in a given week, 3 days of paid leave and 2 working days, those 3 days of leave are not added to the actual working time to exceed the threshold of 40 hours/week. Thus, in Romania, paid annual leave is not considered "working time" when calculating overtime.</p>
MaRa/ Finland	<p>Yes, the result is that annual leave is taken into account when calculating overtime compensation. This is the case both in law and the collective agreement. According to the collective agreement if, during a working time period that includes annual leave, the combined total of the working time reduction resulting from the annual leave (7,5h /day) and the actual hours worked during the period exceeds 112.5 hours, compensation for additional and overtime work shall be provided as follows:</p> <ul style="list-style-type: none"> • Up to 120 hours, compensated as additional work;

	<ul style="list-style-type: none"> For hours exceeding 120, compensated at double pay (100% increase in hourly wage). <p>If working time balancing systems are applied, any hours exceeding the maximum regular working hours for a three-week period as defined by the system shall be compensated at double pay (100% increase in hourly wage).</p> <p>The methodology of the Finnish Working Hours Act differs a bit, but results to the same outcome that annual holiday counts towards overtime compensation.</p>
Horeca Vlaanderen/ Belgium	<p>Belgium does not have a specific mechanism which allows for the inclusion of paid annual leave in the calculation of overtime pay. In Belgium the period of working time is the time in which an employee is available to his employer. This can include periods of time where an employee attends training/education or waits for customers. The paid annual leave is not included in the period of working time. Consequently, for now, the paid annual leave cannot be included in the calculation of overtime pay.</p>
Visita/ Sweden	<p>Regular working hours can be a maximum of 40 hours on average per week. According to the law, the Working Hours ACT, WHA (SFS1982:673) the average can be calculated over a four-week period (§5 WHA). The law provides scope for collective agreements to agree on longer calculation periods than four weeks. Visita's collective agreement gives employers scope to calculate the average working hours of 8,16 or up to 26 weeks.</p> <p>Overtime occurs when the working hours exceed the regular working hours according to §5 WHA (unless otherwise stated in the collective agreement). When calculating overtime, leave that is allocated to the employees' regular working hours shall be equated with completed working hours (§7 WHA).</p>

	<p>The answer is therefore YES regarding the view on overtime with reference to the above. If the regular working hours for an employee in a week are 40 hours and the employee is off one day, 8 hours holiday/sick leave or other absence, overtime occurs if the employee works more than 32 hours that week. Note, however, that for overtime to generate overtime compensation, the work must be ordered by the employer or approved afterwards. According to our collective agreement the employer and employee also have the possibility to agree to change time to regular time within the framework of the calculation period.</p>
FIPE/ Italy	<p>In Italy, hours corresponding to paid annual leave are considered working hours. Therefore, if an employee takes paid leave during a week, these hours are counted in the weekly working hours (generally 40 hours) and in the legal threshold for overtime pay.</p>
APHA & APRA/ Austria	<p>Paid annual leave counts as working time when calculating overtime. In the case of paid leave, the normal daily working hours on vacation days must be entered into the time recording system.</p> <p>Austrian law contains a provision that is identical to the French decision in question.</p>
HORESTA/ Denmark	<p>For companies that are not covered by a collective agreement - the answer does not depend on legislation, but on what is agreed in the employment contract. Typically, the hours of paid leave will be included in the guaranteed hours in their contract. If the employee therefore ends up with more hours, this can be overtime. Whether overtime must be paid depends on the agreement between the parties. It may be that payment for overtime is already included in the salary, that it is compensated for on a one-to-one basis, or that it includes an additional supplement.</p> <p>Paid leave is not included in the calculation of hours under the 48-hour rule.</p>

	For hotels, restaurants, and similar businesses covered by HORESTA's collective agreement – paid leave is counted toward the guaranteed hours. This means that if the hours of paid leave combined with actual working hours exceed the guaranteed hours, the excess is considered overtime, which is paid with the hourly rate plus a 50% supplement for the first two hours and 100% thereafter.
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Question 2 – Please let us know if there are any updates to the results of the survey on sick leave ([link to the survey results](#))

Association/Country	
CEHAT/ Spain	<p>In Spain, if an employee becomes ill during their vacation, the law protects them so that they do not lose those vacation days. The applicable regulation is the Spanish Workers' Statute (Article 38.3), which establishes the following:</p> <ul style="list-style-type: none"> • If during vacation the employee enters a situation of temporary incapacity (sick leave), the days of sick leave do not count as vacation days. • The employee has the right to take that vacation days later, once they receive medical clearance, even if the calendar year has already ended. <p>This applies whether the incapacity is due to common illness or accident.</p> <p>The only requirement is that the employee notifies the company and provides the medical certificate.</p>
Koninklijke Horeca Nederland/ The Netherlands	<p>Q1: Yes, in the Netherlands, employees accrue holiday leave during sick leave. They are expected to take holiday leave during long-term sick leave, unless this cannot reasonably be expected of them. If they take holiday leave, they are exempt from reintegration obligations.</p>

	<p>If an employee falls ill during a planned holiday, they can cancel this leave and take the holiday days at a later date.</p> <p>Q2: No. Dutch legislation was clarified in 2012, which has provided clarity. Issues sometimes arise regarding the value of a holiday day. Case law has now made this clearer.</p>
APHORT/ Portugal	<p>There has been no update since the previous survey, and it is believed that none will occur.</p>
IHF/ Ireland	<p>Yes, in Ireland employees on certified sick leave continue to accrue annual leave as if they were still working. If employees are unable to take annual leave because of illness, they have a 15-month carry-over period. If the leave is not used during the 15-month carry-over period, the accrued leave expires, and a new period of accrual commences if the employee continues sick leave. Where the employee returns to work or resigns their role, any accrued leave will either be added to their leave entitlement or paid if the contract is terminated.</p>
FIHR/ Romania	<p>There are no recent legislative changes compared to the results of the aforementioned survey on sick leave. The rule in force remains: the period of temporary incapacity for work (sick leave) does not reduce the right to paid annual leave, but, unlike the case law of the CJEU, Romanian legislation does not expressly provide for the rescheduling of annual leave in case of overlap with sick leave, but leaves this situation to the agreement between the employer and the employee.</p>
MaRa/ Finland	<p><i>Q1 – In your country, do employees continue to accumulate paid holiday during a period of sick leave (due to a non-occupational illness) or during a period of absence due to an occupational illness or accident?</i></p> <p>Yes, annual holiday is accrued also during sick leave regardless of the “origin” of the sick leave. According to law and the collective agreement, 75 days of sick leave in a “holiday</p>

	<p>determination year” (period of one year from 1 April to 31 March) is considered to be equivalent to days of work in the accrual of annual holiday. Moreover, if the illness would last longer than the said 75 days, and if that would lead to a situation where the employee would not be entitled to the (directive) minimum of four weeks of paid leave, the entitlement is guaranteed by issuing so-called additional days off that supplement the accrual of annual holiday so that the Directive minimum is met.</p> <p>The reason for this complicated system is the so-called “holiday bonus” (additional salary agreed in collective agreements that is paid out in addition to holiday pay). When the law was changed to correspond with the directive, it was key that the application of the holiday bonus was not widened beyond the what the collective agreements had intended.</p>
Horeca Vlaanderen/ Belgium	<p>In Belgium employees continue to accumulate paid holiday during a period of sick leave due to an occupational illness/accident as well as during a non-occupational illness/accident. However, this accumulation can be limited to a specific period. (Royal Decree of 30 March 1967)</p> <p>In the case of a non-occupational illness or accident, the first 12 months will be taken into account. If a new period of illness starts 14 calendar days after the previous period, the previous period continues.</p> <p>In the case of an occupational illness or accident, there is a difference between a full temporary incapacity and a partial temporary incapacity. When a full temporary incapacity arises, the full period will be considered. For a partial temporary incapacity, only the first 12 months will be taken into account,</p>

	on condition that this period follows a full temporary incapacity and the incapacity amounts to at least 66%.
Visita/ Sweden	<p>No, the rules are still the same. The Annual Leave Act (SFS 1977:480) section 17 stipulates:</p> <p>Where one or more days on which an employee is unable to work due to illness or occupational injury, or one or more days on which holiday pay accrues pursuant to sections 17 a and 17 b, occur during the annual leave, such days shall not be counted as annual leave days, provided the employee promptly makes a request to that effect. In such case, annual leave days which remain to be taken shall be scheduled consecutively, unless the employee otherwise agrees.</p> <p>Sections 17a and 17b in the Annual Leave Act says that the right to holiday pay occur during absence from work in respect of leave under the Parental leave Act, leave due to the risk of transmission of contagion, leave pursuant to the Family Care Act, leave which relates to trade union matters, leave due to basic training or reserves training under the Military Service Act and leave in accordance with the Swedish Language Training for Immigrants. Note that there are some different limitations on how many days of these types leave generates the right to holiday pay.</p>
FIPE/ Italy	<p>It's not mandatory in Italy, but it depends on the Collective Agreements. For example, the Collective Agreement signed by FIPE states that paid leave is not acquired during absences, even if it is due to an accident at work or an occupational illness.</p> <p>The collective agreement also stipulates that the onset of illness interrupts the holiday period.</p>
APHA & APRA/ Austria	No updates
HORESTA/ Denmark	The answer to Q1 shall be changed to the following text:

	<p>Salaried employees covered by the Danish Salaried Employee Act accumulate paid holiday from the employer doing sick leave, no matter the cause for the sick leave.</p> <p>Employees covered by HORESTA's main collective agreement accumulate paid holiday from the employer doing sick leave, no matter the cause for the sick leave.</p> <p>According to the Danish Holiday Act, an employee who is not entitled to full salary during sickness accrues the right to paid holiday in the form of sickness holiday pay from the second day of absence in each period of illness. Furthermore, the Danish Holiday Act states that sickness holiday pay amounts to 12.5% of a salary calculated based on the employee's usual salary during the four weeks preceding the absence. For an employee who is entitled to partial salary during sickness, the sickness holiday pay corresponds to the difference between the sickness holiday pay and the holiday pay earned on the partial salary.</p>
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