

VACATION ENTITLEMENT IN GERMANY



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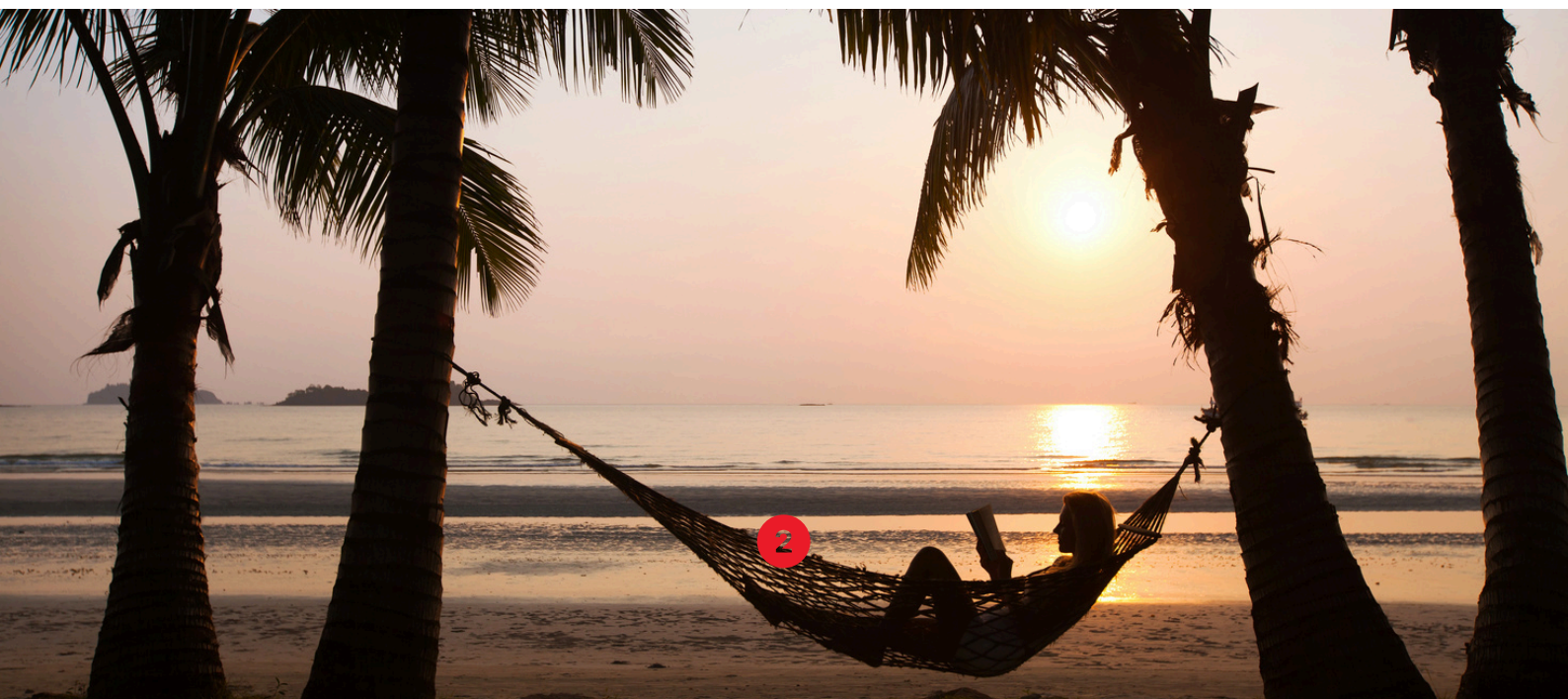
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Anyone who works needs time to recover. Most employees work five days a week, followed by a two-day weekend for rest. Additionally, the law provides four weeks of annual vacation leave for employees. In general, every employee is entitled to at least the number of vacation days stipulated by the Federal Vacation Act (BUrlG). Employers and employees can agree on a higher vacation entitlement in the employment contract, and applicable collective agreements may also grant additional vacation days. However, employers are not allowed to fall below the minimum requirements of the Federal Vacation Act. At first glance, the rules seem simple, but in practice, they raise many questions. For example, situations like taking vacation during the probationary period or falling ill during vacation are not uncommon.

Minimum Vacation According to the Federal Vacation Act

The Federal Vacation Act (BUrlG) regulates the minimum entitlement to paid vacation leave that every employee in Germany is entitled to annually. The law dates back to 1963. Since Saturdays are still considered working days in Germany, the law mandates at least 24 working days of paid vacation per year. This generally translates to: An employee is entitled to at least four weeks of paid vacation.



The actual minimum vacation entitlement depends on the length of the workweek:

- Six-day workweek: At least 24 vacation days
- Five-day workweek: At least 20 vacation days

The full entitlement to paid vacation leave is granted for the first time after six months of employment with the company.

Where Is Vacation Entitlement Regulated?

The Federal Vacation Act (BUrlG) only governs the legally required minimum entitlement for employees. Additional provisions can extend the vacation entitlement and also include regulations for special leave not covered by the Federal Vacation Act (e.g., for personal events such as marriage, the death of a close relative, etc.). Such provisions may arise from:

- an employment contract,
- a collective agreement,
- a works agreement,
- the Youth Employment Protection Act (JArbSchG), and
- the Social Code (SGB IX).



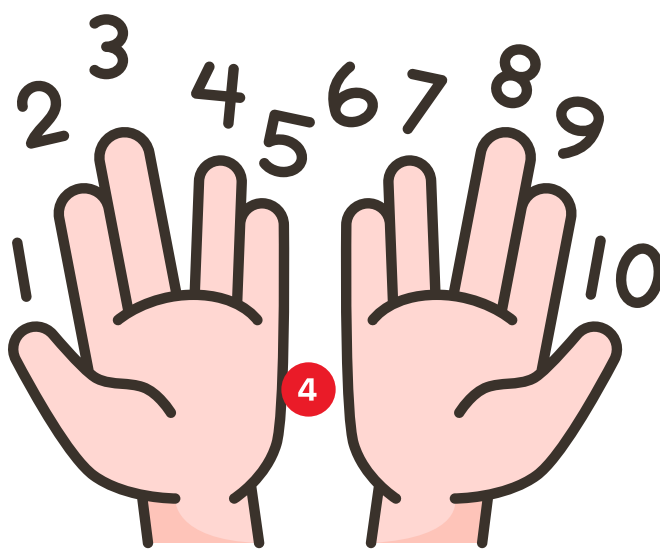
What Is the Legal Vacation Entitlement for Part-Time or Marginal Employment?

In part-time employment, employers often face the question of whether reduced working hours also reduce the vacation entitlement. How many vacation days a part-time employee or mini-jobber is entitled to largely depends on the distribution of working hours. Fundamentally, employees who work fewer hours are also legally entitled to four weeks of paid minimum vacation. If an employer grants their full-time employees more vacation days, part-time employees with fewer weekly working hours are entitled to the same number of days.

- If an employee in a company with a standard six-day workweek also works their reduced hours across six days per week, they are entitled to the same number of vacation days as full-time employees.
- Similarly, in companies with a five-day workweek, if the part-time work is spread over five days, the same rule applies.

This is because, regardless of part-time or mini-job status, an employee requires five or six days to take a full week of vacation, just like their full-time colleagues.

The situation changes if an employee works only, for example, three days per week. In that case, only three vacation days are needed for a full week of vacation. The statutory minimum vacation entitlement is then reduced to 12 days, which still equals four weeks of annual vacation.



The vacation entitlement for part-time employees and marginal workers is calculated using the following formula:

(Vacation entitlement for full-time employees x working days of the part-time employee per week) / usual working days per week for full-time employees



Example:

A full-time employee receives 30 days of paid vacation. The part-time employee works four days per week, and the company operates on a five-day workweek. The calculation is as follows:

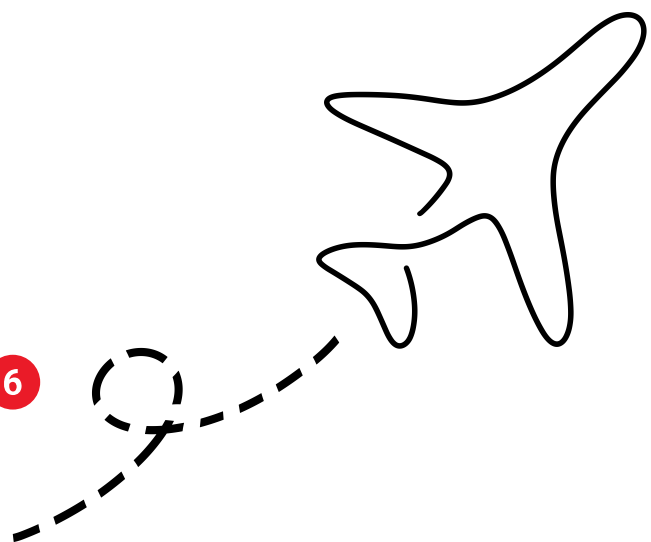
$(30 \times 4) / 5 = 24$ vacation days for the part-time employee.

Employer Obligations in Vacation Planning

The employer's obligations to grant vacation leave are regulated in the Federal Vacation Act (BUrlG) as follows:

- **Employee Vacation Requests:** Employee vacation requests must generally be considered unless urgent business needs or the vacation requests of other employees, which take precedence due to social criteria, conflict with them.
- **Vacation After Medical Treatments:** Vacation requested immediately following a medical preventive care or rehabilitation measure must be granted.

- **Continuous Vacation:** Vacation should ideally be granted in one continuous period. If the annual vacation entitlement exceeds 12 days, at least 12 consecutive working days of vacation must be granted. Employees are generally entitled to request continuous vacation as this serves the purpose of recovery. If multiple employees request vacation for the same period, the employer may deny the request if urgent business needs conflict. The decision on who is granted vacation must be based on social criteria. To ensure good planning, it is advisable to create a vacation plan at the beginning of the year.
- **Expiration of Vacation Entitlement:** Vacation entitlement generally expires at the end of the calendar year. If an employee could not take their vacation due to urgent business needs or personal reasons (e.g., illness), it is carried over into the next year and must be used within the first three months. Longer carry-over periods can be agreed upon in individual contracts or collective agreements. The employer must inform employees if their vacation entitlement is at risk of expiring.
- Further restrictions for employers arise from Directive 2003/88/EC of November 4, 2003, concerning certain aspects of working time organization. This directive obligates all employers within the EU to ensure that every employee receives their minimum entitlement of four weeks of vacation leave. This may impose similar duties of care on employers as those related to working hours. Some regional labor courts in Germany have already ruled that employers are required to compel employees who do not request their vacation to take their mandatory recovery breaks.



Vacation in Shift Work

In fully continuous shift work, Sundays and public holidays are considered working days. Employees working in shifts must use a vacation day for a day off on Sundays or public holidays, just as they would for a normal weekday.

A ruling by the Federal Labor Court on July 21, 2015, provides clarity on how workdays with night shifts, which span over two calendar days, are to be assessed. The court ruled that vacation days always refer to calendar days. If a shift starts on one day and ends on the following day, two vacation days must be deducted. Employees who work more than five days per week in shift work need to use more vacation days than employees with a standard five-day workweek. Therefore, they are entitled to a higher vacation allowance. This ensures they receive at least the statutory minimum vacation or an equivalent vacation entitlement comparable to regular employees.

The calculation is based on a five-day workweek and uses the following formula:

Vacation days × workdays with different distribution per year ÷ workdays per year in a five-day workweek.



Vacation on Christmas Eve and New Year's Eve

From a legal standpoint, Christmas Eve and New Year's Eve are considered regular working days. Employees who wish to have these days off must use a full vacation day. Different rules only apply if specific agreements have been made in employment contracts, collective bargaining agreements, or company agreements.

A company practice can also serve as the basis for differing regulations. If an employer grants employees full or partial time off on Christmas Eve and/or New Year's Eve for three consecutive years without explicitly reserving the right to change this, employees may assume this constitutes a "company practice." In such cases, these days off must generally continue to be granted.

Vacation Days for Half-Days Off and Vacation Between Holidays

If companies grant employees a half-day off on Christmas Eve or New Year's Eve, employees who request vacation for that day should not be disadvantaged. In this case, only half a vacation day will be counted.

If a company closes between the holidays and sends its employees on company vacation, employers should carefully follow the regulations concerning company vacation.



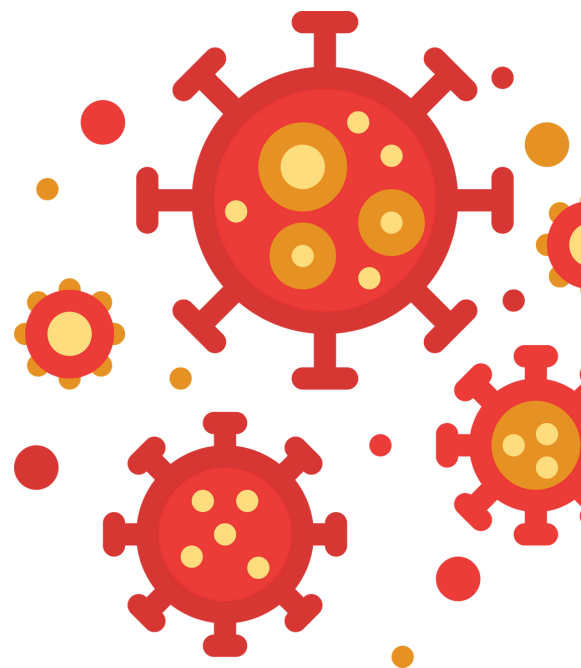
Illness During Vacation

Illness cannot be predicted, so employees may not only fall ill during working hours but also during vacation. If an employee becomes ill during their vacation, the days of illness, as confirmed by a doctor's note, will not be counted as vacation days. These days will be credited to the employee later in the year as unused entitlement. Vacation is meant for rest, and a sick person cannot rest properly.

Since 2023, employers must use the electronic sick note (eAU) retrieval process: employees no longer need to submit a sickness certificate to their employer but only need to inform them of the sickness. Medical practices send the sick note data to the health insurance providers, and employers must retrieve it from there.

However, this new process does not apply to sickness certificates from abroad. If employees are on vacation abroad and fall ill, they are still required to provide proof of illness to their employer and health insurance company. If the illness days are not to be counted towards annual vacation, employees must obtain a doctor's certificate from a doctor at the vacation location. If this is provided, employees are entitled to continued payment during illness by the employer. They must also inform their employer and health insurance company as soon as possible, including:

- the illness itself,
- the expected duration, and
- the address of their location.



Vacation Entitlement for Employees with Long-Term Illness

Employers are relieved from their main obligations under the employment contract when employees are on long-term illness. Wage continuation typically ends after six weeks, and employees on extended sick leave may receive sick pay or unemployment benefits. However, vacation entitlement continues to accrue.

In 2012, the Federal Labor Court ruled that employees can claim any unused vacation due to illness up to 15 months after the end of the calendar year in which the vacation entitlement arose; after this period, the entitlement expires. Specifically, if an employee has been ill throughout the entire year of 2024, they must use their vacation entitlement from 2024 by March 31, 2026, at the latest.

Vacation During the Probationary Period

According to the Federal Vacation Act (Bundesurlaubsgesetz), employees are only entitled to the full vacation after six months of employment. Therefore, new employees accrue a pro-rated vacation entitlement during the first six months of their employment. For each month of employment, the employee earns 1/12 of their contracted annual vacation. For example, a new employee entitled to 24 days of vacation per year will accrue 2 vacation days per month during their first 6 months.

It is also possible to include a vacation ban in the employment contract for the first six months. In this case, the employee is not entitled to any vacation during this period. After the probationary period, the employee is allowed to take their entire annual vacation.

When Does Vacation Entitlement Expire?

European law and the Federal Labor Court no longer allow vacation to simply expire:

- In 2019, the Federal Labor Court ruled that employers must actively remind their employees to take any unused vacation days. Employers are obligated to inform their employees that their vacation days will expire if not taken. It is still unclear whether vacation entitlement becomes time-barred after a certain period.
- According to the European Court of Justice, an employer is required to notify the employee in good time, explicitly, and with a warning about the impending expiration of their vacation entitlement.

If this explicit notification is made and the employee still does not submit a vacation request, the employer may invoke the expiration of the entitlement after the end of the calendar year or the transfer period, as the employee has consciously and voluntarily waived their vacation. Only under these circumstances will the vacation entitlement expire if not applied for in time.



Guidelines for Employers:

To ensure that employees either take their vacation on time or that the employer can rely on expiration in the case of employee inaction, employers should take the following steps:

- No later than the beginning of the second half of the year, notify employees that unused vacation days will expire at the end of the year or, if applicable, at the end of the transfer period in the following year, and that a payout is no longer possible.
- The notification should also include the number of unused vacation days remaining.

Vacation Payout

In general, employees do not have the option to have their vacation entitlement paid out instead of taking time off. However, there is an exception to this rule: if the employment relationship ends and the employee is unable to use their remaining vacation days by the last working day, the employer must compensate for the unused vacation days. This often occurs when an employee resigns.

The Federal Vacation Act (Bundesurlaubsgesetz) defines how the amount of the so-called vacation pay (Urlaubsentgelt) is calculated. For each vacation day, the employee receives the average amount they earned on a working day during the last 13 weeks.



Special Vacation Rules for Minors and Severely Disabled Employees

Minors: The legislator views minor employees, such as apprentices, as particularly deserving of protection. As a result, the minimum vacation entitlement increases according to the rules of § 19 of the Youth Employment Protection Act (JArbSchG), depending on their age:

- Minors under 16 years of age at the beginning of the calendar year: at least 30 days
- Minors under 17 years of age at the beginning of the calendar year: at least 27 days
- Minors under 18 years of age at the beginning of the calendar year: at least 25 days

In this case, the legislator bases the entitlement on working days and a six-day workweek.

Severely Disabled Employees: According to § 208 of the Social Code IX (SGB IX), employees with a disability degree (GdB) of at least 50% are entitled to additional paid vacation days. The Social Code grants them an additional week of vacation. Depending on the number of working days, the additional vacation entitlement is as follows:

- Six-day workweek: at least 6 days
- Five-day workweek: at least 5 days
- Four-day workweek: at least 4 days



Granting Additional Vacation and Creating Vacation Rules

Many employers grant employees more vacation days than the statutory minimum of 24 days for a six-day workweek or 20 days for a five-day workweek. In such cases, it is beneficial for the employer to include wording in the employment contract that differentiates between statutory and additional vacation days. This allows the employer to establish separate rules for the additional vacation days. For example, the employer could decide to let the additional vacation days expire at the end of the year or increase the number of vacation days beyond the statutory minimum based on the length of service. It is not recommended to grant additional vacation days based on age, as this could be discriminatory.

Correctly Calculating Vacation Entitlement

Employers often hire temporary workers and schedule them for only a few hours. To calculate vacation entitlement correctly, it is advisable to contractually agree on the number of weekly working hours and the number of working days. If an employee's working hours and/or working days change, their vacation entitlement should be recalculated accordingly.





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