Clifford Chance

BRIEFING

PAID LEAVE
TWO NEW MAJOR RULINGS ON PAID LEAVE

Two recent rulings from the *Cour de cassation* continue to refine employers' obligations on paid leave.

Consistent with the 13 September 2023 ruling[1], which confirmed that employees continue to accrue paid leave while on sick leave, whether the illness is work-related or not, the *Cour de cassation* has further aligned French law with EU requirements through two recent decisions clarifying the interaction between paid leave, sick leave and overtime calculation. These developments reinforce the need for employers to review their HR and payroll processes to ensure compliance and to assess potential financial exposure.

Key issues

1. An employee who falls ill while on paid leave and properly notifies the employer, is entitled to postpone the affected paid leave to a later date.
2. For employees on a weekly working time schedule, periods of paid leave must be taken into account when calculating weekly overtime.

1. PAID LEAVE INTERRUPTED BY SICK LEAVE: NEW RIGHT TO POSTPONE PAID LEAVE

The *Cour de cassation* has overturned its long-standing case law: from now on, an employee who falls ill while on paid leave and properly notifies the employer is entitled to postpone the corresponding paid leave[2].

This ruling brings French law into alignment with EU case law, which clearly distinguishes between paid annual leave, intended for rest and leisure, and sick leave, designed to allow recovery from illness.

[1] Cass. soc., 13 Sept. 2023, n° 22-17.340, 22-17.638
[2] Cass. soc., 10 Sept. 2025, n° 23-22.732

Since the employee is unable to rest due to illness, any paid leave coinciding with a period of sick leave can be deferred to a later date.

Employer considerations:

- In the absence of specific guidance from the ruling, the 15-month carry-over period[3] during which the employee can request to take the associated paid leave likely applies (starting from the employee's return to work and receipt from the employer of the required information on the timeline for using deferred paid leave).
- In line with the 13 September 2023 ruling and subsequent legislation, sick leave coinciding with a period of paid leave shall itself generate additional paid leave.
- For payroll purposes, the period shall be treated as sick leave rather than paid leave, meaning employers shall need to apply sick pay rules (including top-ups to statutory sick pay) instead of paying standard holiday pay.

2. CALCULATION OF WEEKLY OVERTIME: PAID LEAVE NOW COUNTS AS WORKING TIME

The *Cour de cassation* has clarified that paid leave must be included in the calculation of weekly overtime[4].

Previously, only actual hours worked were counted. This change aligns French law with EU law, which prohibits measures that can financially disadvantage employees for taking paid leave.

Employer considerations:

- For employees whose working time is computed in hours over the week (e.g. 35 hours), taking a day of paid leave will now be counted as 7 hours of theoretical work. This means that taking a day of leave may trigger overtime if the employee works more than the remaining threshold hours in the week. For example, if an employee works over 28 hours during the remaining four days, overtime is now payable, whereas previously no overtime would have been due if the total hours worked during those days did not exceed 35. For employees with regular overtime included in a fixed salary, the financial impact may be limited as paid leave periods are generally already taken into account – although this was not the case in the present situation.
- A similar approach may apply to part-time employees' additional hours worked beyond contracted hours.
- Whether this case law will be extended to periods of sick leave remains unclear. Future case law may provide further guidance.

[3] Article L. 3141-19-1 of the French Labour Code
[4] Cass. soc., 10 Sept. 2025, n° 23-14.455

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